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Discipline as a Means of Assuring Continuing Competence in the Professions and Tables of Discipline Activities by Profession

Prepared by
Barry J. Reiter
for
The Professional Organizations Committee

This working paper was commissioned by
The Professional Organizations Committee,
but the views expressed herein are those of the author
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APPENDICES

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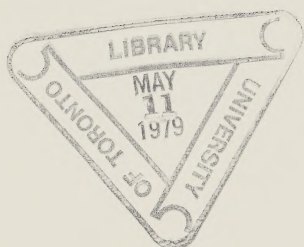
DISCIPLINE AS A MEANS OF ASSURING CONTINUING

COMPETENCE IN THE PROFESSIONS

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Prepared for
The Professional Organizations Committee



APPENDIX

10

EXERCISE AS A MEANS OF ACQUISITION
QUESTIONS IN THE PRACTICE

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DISCIPLINE AS A MEANS OF ASSURING CONTINUING
COMPETENCE IN THE PROFESSIONS

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(a) INTRODUCTION¹

This paper analyses and evaluates the utility of professional discipline as a means of ensuring the continuing competence of practising members of the accounting, architecture, engineering and legal professions in Ontario. It considers the functions that discipline can perform and the constraints on the effectiveness of particular types of discipline systems. It studies the operation of the discipline procedures currently used to regulate members of the professions under review in terms of the functions of and constraints on discipline generally, and suggests proposals for improving the efficacy of discipline as one prong of a concerted attack on competence problems.

This paper considers only the disciplinary procedures of regulatory agencies or significant voluntary professional associations. Although they may have significant effects on the maintenance of continuing competence, disciplinary sanctions administered by a professional's employer or members of his or her firm or company (reprimands, demotion, ostracism, expulsion), by peers (disparagement of reputation, refusal to refer work, ostracism), or by clients (refusal to pay, withdrawal of further business, disparagement of reputation), are beyond the scope of the paper.

(b) "COMPETENCE"

The range of components properly included within a definition of a professional's "continuing competence", competence retained after entry into the profession and throughout its practice,

narrowly or widely circumscribed. The narrowest view would limit inquiry to the question of whether or not the professional possesses the minimum level of knowledge or technical skill required of a person who performs the work that this professional has undertaken. Under the widest definition, a professional would be regarded as competent only if he or she had this minimum level of knowledge or skill and, as well, were habitually able to apply the knowledge or skill to advance the client's interests without deficiencies in performance. The wide definition would treat a professional as having performed in an incompetent manner, where, although possessed of the minimum knowledge or skill, the professional, in the course of executing professional duties:

- (a) failed to apply professional expertise properly to the client's engagement;
- (b) exhibited a disregard for the welfare of the client or of society generally;
- (c) was reckless;
- (d) was negligent;
- (e) was dilatory without excuse;
- (f) involved the client in unnecessary additional expense; or
- (g) failed to communicate adequately with the client to ensure that the client was sufficiently apprised of the professional's progress or the client's situation generally.

The difference between the narrow and the wide definition is that between basic professional abilities and satisfactory performance of particular professional duties undertaken.²

Discipline is only one of a variety of techniques which might be deployed to promote continuing competence. The choice of an optimal mix of techniques and of the role of each component, can be made only after identification of the problems of competence that arise in each profession, and after evaluation of the contribution any particular technique can make in light of constraints on its ability to contribute in that way. The discussion of the functions discipline can conceivably perform and of constraints on its performance of those functions, is undertaken in the context of the widest possible definition of competence: how can discipline help to guarantee competence in the widest sense, and what limits its ability to do so? The question of which components of the wide definition should be, or are being addressed by existing disciplinary mechanisms, is considered (in the light of this appraisal), below.³

PART B - CONTRIBUTIONS OF DISCIPLINE TO CONTINUING COMPETENCE

Discipline, as a means of continuing competence, can be used by professional organizations to perform five functions. These functions, discussed in detail below, are:

- (a) a punitive and cleansing function;
- (b) a deterrent function;
- (c) a quality control and educational function;
- (d) a dispute resolution function; and
- (e) a professional-protective function.

Constraints arising from the nature of the profession and from any particular disciplinary system limit the ability of the system to perform some or all of the functions effectively. This problem is discussed in detail in Part C of this paper. The present Section considers functions discipline could perform and ignores constraints.

(a) PUNITIVE AND CLEANSING

A discipline system can help to assure that all practising professionals are competent by expelling incompetent persons from the profession. Expulsion can be temporary (suspension), probably-permanent (expulsion, but professional entitled to re-apply later), or permanent (expulsion and no right to re-apply).

This function is most easily performed by licensing authorities (expulsion necessarily means loss of the right to practise), but expulsion from a voluntary association may be practically equivalent in some cases. Thus, although a licensed public accountant expelled by the Institute of Chartered Accountants of Ontario (I.C.A.O.) is entitled to continue to practise public accounting if the Public Accountants Council (P.A.C.) does not revoke his or her licence (under The Public Accountancy Act), I.C.A.O. expulsion may mean "economic death" to the accountant, whose clients may require their business to be done by a person entitled to employ the "C.A." designation, or who otherwise refuse to rely upon a person expelled from I.C.A.O. membership.

The punitive function of discipline is most frequently acknowledged in respect of misconduct offences: all professions retain power to expel members for specified criminal or unethical activities. However,

the failure to maintain appropriate standards can be regarded as an "offence" subject to serious disciplinary action. To the extent that incompetent practitioners are effectively removed from practice, the profession is cleansed of such offenders and the public is assured of the competence of those practitioners who remain.

(b) DETERRENCE

Discipline can deter incompetence. A professional subjected to discipline but not "purged" from practice, may nonetheless have found the experience unsavoury enough to be more conscientious and attentive in future (individual deterrence). The threat of exposure to disciplinary proceedings may serve as a "stick" prodding other practitioners to keep their skills and knowledge current and to guard against performance deficiencies (general deterrence). To the extent that particular inadequacies of skill or knowledge or particular performance deficiencies are found to warrant disciplinary reprobation, the deterrent function might become more specific, indicating more precisely failures and deficiencies to be avoided. Discipline performs its deterrent function best in respect of deficiencies of skill or knowledge known to individual practitioners: it informs them that they risk reprobation by failing to remedy the inadequacies. The deterrent function is less effective in respect of practitioner deficiencies related to negligence, or unintentional delay and failure to communicate with clients. It is generally recognized that deterrents are more effective in cases of intentional or reckless misconduct than in respect of inadvertent deficiencies.

(c) QUALITY CONTROL AND EDUCATION

A disciplinary mechanism can perform quality control and educational functions in the following four ways:

(i) Quantitative function: The number of matters handled by the discipline system can provide quantitative information about the extent to which there is a competence problem in the profession. The constraints

discussed below mean that "inputs"⁴ into the disciplinary mechanism, give only very rough guidance about the extent of the problem. Nevertheless, such a measure provides some evidence and is useful in indicating trends in the extent or types of difficulties being encountered.

Similarly, the "inputs" figure can assist in assessing the efficacy of new attempts to combat incompetence. Inputs figures before and after the introduction of a peer review program, a continuing education program, or a substantive or procedural change in the post-inputs stage of the discipline procedure itself, can help to indicate the degree to which the new program is inducing the desired result.

(ii) Competence problem identification: Analysis of inputs into the disciplinary mechanism can inform the disciplinary body about the nature of some of the competence problems as well as their extent. The pattern of inputs may indicate that particular fields of practice, or particular groups of practitioners (sharing such common features as age, geographic location of practice, combination of professional duties customarily undertaken, or method of qualification for entry into the profession), are the subjects of a disproportionately high number of inputs into the "competence work" of the disciplinary mechanism.

Identification of particular competence problems in this manner can be helpful in three ways. First, informing members of the profession about the nature of the problems may serve to alert them to unusual dangers and to induce more care in members practising in vulnerable areas. The

reminder about the standard appropriate to avoid difficulties may serve a re-educative function. The express statement of the disciplinary body's concern about the identified problem area may serve as a particular deterrent to those who practise in that area.

Second, problem identification through discipline input analysis may enable the profession to narrow the focus of its attack on incompetence and to make more effective use of valuable and limited resources. Priority in the design and offering of continuing education programs (whether voluntary or mandatory), can be reserved for those areas of practice which, or those practitioners who have demonstrated the greatest need.⁵ The choice of continuing education or of any other technique or combination of techniques (such as peer review, encouraging civil litigation, competence audits, mandatory or monitored continuing education), as the appropriate professional response to incompetence, can be made wisely: the beneficial functions of each technique can be matched with the performance of those functions which problem-identification indicates need bolstering. For instance, if negligent supervision of subordinates appears to be a prime source of inputs, peer review or competence audits might be preferable to mandatory continuing education as a regulatory response.

Finally, problem identification in this way can serve to suggest valuable changes in the design or operation of the disciplinary system itself. It might suggest that problems regarded as outside the jurisdiction of the system should be brought within it, if discipline is an effective response to the problems noted. It might suggest that different sanctions be applied in future where the discipline system takes

jurisdiction and finds fault.⁶ Or it might suggest that discipline cannot contribute adequately to the elimination of particular problems and thereby cause the profession to redesign its response to incompetence to lessen its reliance on discipline.

(iii) Establishment of Standards: The application of discipline to instances of alleged incompetence can assist the profession in establishing, refining and encouraging the maintenance of standards. In some professions, fairly precise standards of expected and required minimum levels of performance standards, against which capacity and performance will be measured in discipline proceedings, can be established and promulgated in advance. In all professions, such standards can be adopted for "standardized" professional activities.⁷

The process of attempting to formulate standards may serve an educational function for those directly involved. To the extent that draft standards (for comment), or final standards are distributed to the profession,⁸ the scope of the educational function is widened.

These standards can be refined, with like effects, in the course of their application in disciplinary proceedings. The conduct in the instance under investigation is tested against the more general standard and is found to be adequate or not. Valid reasons for deviation might be advanced and accepted: the ambit of the general standard is limited. Acceptable minimum capacity and performance levels become more particularized in an ever-increasing range of professional activity. The process of refinement can occur even when the nature of professional activity in some fields requires that competence standards be framed in a most general manner.⁹ Refinement of standards

has an incremental effect on the value of discipline as a deterrent by reminding practitioners of their duties in situations considered in the general standards or in proceedings in which they are applied, and by particularizing the levels of skill and performance required if discipline is to be avoided.

(iv) Symbolic value to the profession: The existence of a vigilant disciplinary mechanism has a symbolic value to the profession. The strong statement that the profession will not tolerate indifference to standards or to the interests of clients helps members to "internalize a sense of excellence, a sense of service and a sense of integrity",¹⁰ (all conducive to vigorous efforts to remain competent), and reminds them of their dedication to more than self-interest in the pursuit of their profession. The possibility of official professional review of capacity and performance thus serves to reinforce the maintenance of competence positively, by encouraging emulation of standards, as well as negatively by deterring their violation with threatened sanctions.

(d) DISPUTE RESOLUTION:

The existence of a discipline system may assist in the satisfactory resolution of disputes in which professionals find themselves involved. While the possibility of discipline may help resolve disputes between professionals, I consider here only disputes between clients and professionals, in which the client alleges that the professional has performed inadequately. I deal particularly with such disputes when the client threatens to take or actually does take action to set the disciplinary mechanism into operation against the professional (usually by complaining to the disciplinary agency).

The threat of action may induce the professional to act to satisfy the clients' demands. It may be simply the appreciation of the seriousness with which the client seems to view the matter that induces action. Notification by the disciplinary agency that a complaint has been received may call the professional's attention to a dispute of which he or she was not previously aware (the client never mentioned it to the professional), or which had been neglected or ignored by the professional. Without conceding the validity of the client's position, the prospect of involvement in discipline may be so unpalatable as to induce the professional to accede to an otherwise unsatisfactory resolution.¹¹

Even if it is clear that disciplinary proceedings will proceed whether or not the client is placated, the professional may choose to attempt to resolve the dispute, feeling that the disciplinary agency's attitude will be less harsh if the client has been satisfied.¹² The effects of the possibility of discipline on dispute resolution can extend beyond adamant clients and individual practitioners. A professional may wish to resolve other similar pending client disputes similarly to the one which resulted in actual or threatened disciplinary action. Other professionals who learn of particular resolutions, or of the discipline agency's views on particular issues (or even that particular kinds of complaints might be considered by the disciplinary agency as within its jurisdiction), may wish to avoid exposure to complaints by their clients: learning that some clients take such disputes seriously, or that the disciplinary agency is prepared to operate on them, may induce the resolution of disputes remote from the original client or professional.

The discipline system operates more directly to resolve disputes where it has jurisdiction to order the professional to satisfy the client. Some systems go so far as to authorize the disciplinary agency to order monetary awards to be paid to complainants against professionals found to have performed improperly. Special sanctions may exist to assure that the professional complies with such orders. The discipline body can thus function as a specialized arbiter, conciliator or "court".¹³ To the extent that "continuing competence" includes the satisfaction of client expectations, dispute resolution is conducive to promoting professional competence. This function may also be performed where the disciplinary agency is able to convince the client that the professional has performed properly and that the client's dissatisfaction is groundless.

A discipline system may assist dispute resolution even where the complaint raises matters regarded as beyond the system's jurisdiction. The system might still operate as a source of information, or might encourage clients to take steps which will be effective to resolve the problem. Initiation of suggested alternative action by the client might promote competence amongst professionals. Thus some discipline bodies regard "disputes raising no more than instances of simple negligence" or "fees disputes" as outside the ambit of disciplinary concern.¹⁴ Nevertheless, if clients complain about such matters to these agencies, they may be advised of rights to take civil action, of how to procure legal representation (or funding for it), or of fees-reviewing, arbitration or conciliation services. To the extent that civil liability or fees investigation operate as a means of encouraging

continuing competence, the dispute resolution function of discipline can be indirectly conducive to competence even in respect of matters outside of disciplinary jurisdiction.

(e) PROFESSION-PROTECTION

The operation of a disciplinary mechanism may be employed by a professional organization to convince the public that the profession is genuinely concerned about the competence of its practising members. The profession might regard it as critical that the public be informed and convinced of the profession's concern so that public uncertainty about how well professional organizations are policing the competence of their members does not breed pressure to remove or qualify the right of self-regulation from professions which have obtained that right, or to require greater public accountability of professions already under some degree of public regulation.¹⁵ A professional organization might wish to reassure the public in this way even where it is genuinely concerned about continuing competence, and where it believes that its discipline system is able to exert a significant influence on the competence of its members.

However, the organization might wish to operate its disciplinary mechanism, present the appearance of concern and attempt to forestall public criticism and control, under other conditions. Though the concern for competence might be genuine, the organization may believe that its discipline system is, or indeed that any discipline system would be ineffective in contributing to the elimination of the competence problems that arise in that profession. Nonetheless, it might feel that any more effective techniques (peer review, continuing education, professional inspection), would not be visible enough to allay public

suspicion sufficiently, and therefore continue to operate its discipline system, though without hope or belief that it will have any substantial impact on problems of incompetence in the profession. Theoretically available to promote continuing competence, the discipline system will be operated practically to resolve problems of misconduct and ethical violations.¹⁶ If the other competence-conclusive techniques deployed by the profession are effective, the retention of a discipline system which had little impact on competence can be regarded as functional. Maintenance of the system diminishes the pressure for increased public participation in professional regulation, participation which might lead to more visible, but less effective control over competence.

A professional organization unwilling or unable to sustain a serious attempt to ensure continuing competence might maintain a discipline system designed to dupe the public into believing it is concerned and altruistic. Such a system would be expected to operate only in the most publicly visible cases, relying on the inability of the public to discover its unwillingness or inability to act in other less visible cases of incompetence.¹⁷ The diversion of the call for increased protection against incompetent performance cannot be regarded as in any way conducive to competence in these cases.

PART C - CONSTRAINTS

The ability of discipline to perform effectively some or all of the potential functions identified above is constrained by a great many factors. These factors can be grouped together under two major headings:

- (a) The "orientation" of the disciplinary agency to the use of discipline as a technique for inducing continuing competence; and

- (b) "institutional factors" in the nature of discipline proceedings generally, in the specific disciplinary system adopted by any particular disciplinary body and in the nature of practice in any profession.

These major groupings are discussed generally in this section and more specifically, in the context of each of the four professions being studied, in Parts D, E, F and G below. Although I have separated the two major groupings for the purposes of clarity of analysis and discussion, it should be recognized that they are closely interconnected functionally and practically. Changes in the orientation of the disciplinary agency can overcome limits on the efficacy of a disciplinary mechanism and induce changes in the practice of the profession: changes in the nature of practice, or the overcoming of certain constraints on the utility of discipline generally may encourage or require changes in orientation.

(a) "ORIENTATION"

This grouping includes constraints attributable to a disciplinary agency's view of the appropriate role of discipline in ensuring continuing competence: what does the agency want discipline to achieve in this field?

Agencies can adopt "misconduct", "passive competence", or "active competence" roles for their discipline systems. The misconduct orientation has historically characterized the role reserved to discipline by many agencies.¹⁸ Agencies which adopt such an orientation confine their use of discipline almost exclusively to misconduct offences. Discipline exists to ensure that only those persons who follow the rules of professional courtesy and who remain of fit character continue as members of the organization. Members are disciplined only for demonstrating inadequacies of integrity: discipline is regarded as the appropriate response to breaches

of criminal or professional ethical standards, but as unsuited to solving problems of incompetence. The sanction normally imposed by such an agency is expulsion from the professional organization.

The "passive competence" orientation characterizes agencies that view control of "misconduct" as the primary role of discipline, but that regard particular demonstrations of incompetence as "misconduct". As before, discipline is reserved to demonstrated inadequacies of integrity; however gross deviations from professional standards are considered to constitute such inadequacies. Discipline might be employed against incompetent practitioners, but the incompetence demonstrated would have to reveal grossly negligent or reckless practice. These agencies do not seek out incompetence actively, but rather wait for instances to be brought to their attention. Where a charge of incompetence is established, these agencies sanction professionals harshly, expelling or suspending them from organizational membership: the continued presence of a seriously incompetent member in the organization is regarded as embarrassing in the same way as the membership of a person who had been convicted of a serious crime would be.

The "active competence" approach is adopted by agencies which feel that discipline can and should make a substantial contribution to the promotion of competence. Discipline is deployed in an attempt to prevent incompetent practice whether or not substandard performance is accompanied by any degree of culpability: the moral overtones observed in discipline by agencies operating under "misconduct" or "passive competence" orientations, are lacking in many of the cases considered by "active competence" agencies. These agencies actively seek to discover incompetent practice

and demonstrate flexibility in the imposition of disciplinary sanctions. The sanctions are designed to rehabilitate and re-educate those practitioners whose standards have slipped, as well as to rid the organization of members who have demonstrated failures of integrity. "Active competence" agencies consider a far greater range of incompetent performance to be subject to disciplinary scrutiny than do agencies that adopt "passive competence" or "misconduct" orientations.

This is not to suggest that any particular orientation is consciously adopted. Indeed, until the fairly recent public concern about professionalism, many professions appeared to lack express definition of both the ends to be achieved by disciplinary proceedings and the means for arriving at those ends.¹⁹ Nevertheless, the design of a disciplinary system, and the nature and disposition of matters brought into it, are strong evidence of the agency's unstated but intended role for discipline. Particularly revealing are such considerations as the following:

(i) How is the agency's jurisdiction over incompetence circumscribed? To the extent that the competence problems which arise involve negligence, dilatoriness, or failures to communicate adequately, an agency which adopts a narrow definition of incompetence adopts a "misconduct" or at best a "passive competence" approach. The question of how competence is defined by the disciplinary agency (for the purpose of determining whether or not the disciplinary mechanism can take jurisdiction over a matter), must be ascertained by looking at how the governing rules or statutes are interpreted practically, rather than by mere examination

of the printed words: what operational definition is employed?

(ii) How willing is the agency to overcome "institutional factors" constraints on the effective use of discipline in its profession? It is impossible to discuss this issue in isolation from the "institutional factors"; nor is it helpful to consider what efforts might be made to overcome such constraints other than in the context of the individual professions under study, save to say that the agency's willingness can be investigated at highly objective levels (what financial and human resources are invested in discipline), highly subjective levels (are complaining clients welcomed and encouraged or treated harshly and discouraged), and intermediate levels (what efforts has the agency made to increase opportunities for disciplinary review of competence and how willing is it to overcome practitioner resistance to its increased efforts)?

The constraining influence of the different discipline agency orientations varies according to the types of competence problems posed by practitioners and the importance of the "institutional factors" in the context of the practice of each profession and the operation of particular models of disciplinary system.

The orientation of disciplinary agencies does not remain fixed. Although it is difficult to account for or to predict agency orientation or changes in orientation, the following factors appear to be relevant in attempting to do so:

(1) CHOICE OF TECHNIQUE: In the course of exercising its duty to safeguard the public interest, the agency may make a conscious choice to be aggressive or otherwise in its use of discipline to control

incompetence. To the extent it believes that discipline will be unable to contribute adequately to justify additional costs or professional resistance, such an agency might tend to reserve discipline for misconduct, or to adopt a passive competence posture to deal, after the fact, with serious incompetence. The decision about whether or not to increase investment in discipline will also be affected by the intensity and cost of disciplinary activity already required to enable satisfactory control of misconduct offences. The opportunities for and costs of detection and prosecution of misconduct offences vary significantly among different professions.

(2) PROFESSIONAL SELF-INTEREST: Where guaranteed competence lies close to the core of professional activity, and particularly where the profession does not enjoy a monopoly (or its monopoly is being seriously challenged), it will be in the interest of the profession generally, as well as in the interest of the public, to discipline incompetence effectively. The case can be illustrated by reference to the practice of public accounting. Especially before public accountants were required to be licensed, the only incentive to engage a member of the I.C.A.O. (for instance) as opposed to a (usually less costly), non-member of any accounting organization, was the credibility that accompanied membership in the Institute. An Institute member who performed incompetently harmed not only the accountant's and client's interests, but also the interests and integrity of all accountants and the Institute itself. To the extent an individual "C.A." could remain incompetent, the position of the Institute itself was compromised. The public and professional interests were coincident. Even today, when public accountants must be licensed, the threats to the Institute's position as sole qualifying

body under the Act by other associations or individuals anxious to challenge the Institute's position, are conducive to the Institute's adoption of a position of disciplinary vigilance over competence: it is the "exceptional guarantee of quality", which permits the Institute to assert its unique dominance over public accounting.

Similar results may be achieved through other means by which the profession generally is made to bear the costs of the incompetence of its individual members. In a self-regulating profession in which all members are insured by group coverage on a non-risk-rated basis, incompetence that leads to civil liability imposes costs, in the form of increased premiums, on all practitioners. In some cases, professionals must undertake concerted or complementary action. If one professional is unable or unwilling to perform adequately, additional expense and effort may be required of other professionals.²⁰ A practitioner's self and professional image may be impaired by the knowledge that incompetent persons are being permitted to continue practising in such fashion. To the extent that competent professionals believe discipline will control such costly and embarrassing incompetence, pressure for its exercise can be expected to increase.

(3) PUBLIC ACCOUNTABILITY: If the public perceives serious incompetence problems or otherwise requires the profession to demonstrate its interest in competence, pressure may mount to take a more vigorous disciplinary role. There can be no doubt that the public has manifested increased interest in the profession recently and that the "rise of consumerism" has led some clients and some members of the general public to be less trusting of professional claims that adequate

"policing" is taking place. Such interest and distrust have created pressures of varying intensity on the disciplinary agencies of the professions. In extreme cases, the pressure has culminated in direct "public orders" to the relevant disciplinary agencies to become more aggressive.²¹

(b) INSTITUTIONAL FACTORS

This grouping includes constraints produced by the nature of discipline proceedings and of the practice of professions.

Any discipline system intended to operate on competence matters requires that:

- (1) Alleged instances of incompetence be brought to the attention of the system;
- (2) These allegations be investigated and a judgment be made about whether or not a lack of competence has been demonstrated; and
- (3) Some sanction be applied to practitioners found to have performed incompetently.

Although not absolutely inevitable, most systems require a fourth element, namely that:

- (4) There be some reporting (to the licensing body to interested or all members of the profession or to the public generally) of the results of disciplinary proceedings in individual cases or generally.

These four requirements are arranged chronologically in terms of a discipline system's disposition of any particular case. It may be sufficient for the satisfactory performance of some of the potential

functions of discipline that only the earlier stages of discipline be performed effectively. Dispute resolution and profession protection functions may be achieved even where no more happens than that disputes come to the attention of the disciplinary agency. Achievement of some other functions requires that the procedure progress further. The cleansing effect of punishment requires that expulsive sanctions be applied. Effective deterrence requires the imposition of sanctions and general reporting to the profession of the potential for their imposition in like cases in the future. While minimal quality control and educational functions are achieved in the course of investigation and judgment and in the imposition of sanctions, full realization of discipline's potential for achieving these ends requires extensive record-keeping and analysis, and wide publication of results.

All professional discipline is constrained in its ability to satisfy each of the identification, investigation and adjudication, sanction imposition and reporting requirements described above. The intensity with which the constraints operate varies with the nature of the discipline system, the type of professional practice involved, and particularly with the orientation of the disciplinary agency: the appropriate orientation can overcome most of the constraints that would otherwise limit the efficacy of discipline as a means of promoting continuing competence.

(1) IDENTIFICATION OF INSTANCES OF ALLEGED INCOMPETENCE

Many potential sources of information about professional incompetence may be available to a disciplinary agency. An agency with limited sources of inputs into the discipline mechanism will systematically fail to become apprised of certain forms of incompetence; and even an agency which attempts to stimulate all sources must recognize that it will likely not become aware of particular sorts of incompetence problems. The three main sources of input information are:

- (i) agency-stimulated or agency-discovered information;
- (ii) complaints by clients; and
- (iii) complaints by other professionals.

(i) Agency-stimulated and agency-discovered information: A discipline agency may take steps to tap available sources of information suggestive of incompetence or may attempt to generate such information of its own motion. The agency may approach insurers of practitioners in an attempt to obtain information systematically each time potential civil liability is discovered by insurers. The information could be provided upon notification to the insurer of a claim or at some later stage of claims - handling (settlement, conclusion of litigation). Such information would provide the disciplinary agency with a number of situations in which someone (at least), appeared to believe seriously that a professional had behaved (at least), negligently. The difficulties in obtaining such information in some cases (insurer reluctance, likely inability of the agency to compel disclosure) are canvassed fully in "Civil Liability as a Professional Competence Incentive".²² More limited access to similar information can be obtained by reviewing such allegations of professional negligence as proceed to litigation. Arrangements can be made

with court clerks for systematic review of actions commenced and for reporting to the agency of actions involving allegations of professional negligence. At an even more limited level, newspaper monitoring procedures will provide information about such actions as seem important enough to be reported in the public press. Monitoring of other publications, while presenting logistical difficulties, could amplify the scope of the newspaper watch.²³ Agencies which themselves administer funds to compensate victims of professional negligence can learn of instances of alleged incompetence by investigating the circumstances of cases in which claims are presented or are settled.²⁴ The constraints on the range of incompetence which would be revealed through any form of monitoring civil liability are fully described in the "Civil Liability" paper, and it suffices here to say that only particular types of incompetence involving distinctive patterns of harm to a relatively limited cross-section of those who engage professionals would be revealed through even the most thorough monitoring.

Agencies which administer or can monitor the workload of professional fees-reviewing, fees-mediation or fees-conciliation services may be able to obtain valuable input information. Fees disputes frequently involve an element of dissatisfaction with the quality of professional services rendered. Useful inputs into discipline can be provided by systematic review of the circumstances of cases in which the taxing master,²⁵ or any other external or internal institution charged with investigating the appropriateness of professional fees charged in light of the quantum and quality of services rendered, requires a substantial reduction of the professional's original fee claim. However these institutions are client-

initiated: even if they agree to assist by reporting cases to discipline agencies, the range of competence problems presented to fees-reviewing institutions is limited by many of the constraints applicable to client complaints generally.²⁶

In professions in which voluntary or compulsory peer review is employed, the results of the reviews can be made available to the disciplinary agencies. Access to information gained in the course of peer reviews overcomes many of the deficiencies of disciplinary agency awareness of incompetence problems that arise when the agency relies on client-initiated activity as the main or sole input. However, the possibility that peer review results may be passed on to disciplinary agencies would tend to dampen enthusiasm for voluntary programs and to stiffen opposition to the introduction of mandatory peer review: to the extent that either of such peer review programs is a valuable tool or is a tool preferable to discipline as a means of promoting competence, the costs of gaining access to more disciplinary inputs might outweigh the benefits.

Inspection of the practices of professionals is the most aggressive agency action. The agency can either arrange to review the competence of practitioners at periodic appointed intervals, or can "spot-audit" the competence of its membership by making unannounced visits to evaluate competence as demonstrated by the records of a small number of matters handled recently. Where appropriate, disciplinary action can proceed on the basis of the information revealed by the "audit" or by follow-up information.

This device allows the competence of the widest possible range of practice and practitioners to be subjected to disciplinary scrutiny and potentially to form an input into discipline: it avoids the difficulty of the artificial narrowing of the range of incompetence which will be brought to the attention of a system that relies on client-initiated activity alone or in combination with civil liability monitoring to produce disciplinary inputs. While introduction of such a scheme can involve the agency in much expense, the competence audit procedure can be reserved for areas of practice (geographical, by subject matter, by firm size or any other appropriate combination of criteria), identified as posing high risks of incompetence. The high risk areas can be identified through analysis of disciplinary inputs or outputs, through analysis of civil liability claims or settlements or through theoretical analytical techniques.²⁷ In some professions, problems of confidentiality, privilege and required professional independence might complicate a practice inspection program. However these difficulties can be addressed and have not proven insurmountable elsewhere.²⁸

(ii) Complaints by clients: Many agencies rely on complaints by dissatisfied clients as the almost exclusive source of inputs into the competence-disciplinary mechanism. Such complaints will ensue only when the client:

- (iia) perceives that the professional has performed incompetently;
- (iib) knows of the existence and concerns of a complaints mechanism; and
- (iic) perceives some incentive to reporting the complaint.

Reliance on complaints as a source of inputs generally suffers from the fact that the consequences of incompetence have usually already been incurred in individual cases. The conditions governing client complaints entail that the discipline system of an agency which relies on them as a major source of inputs will be seriously constrained.

(iia) Client perception of incompetence

Clients are frequently unable to judge the quality of professional services rendered to them. While the extent of the difficulty varies among clients, among professions and within different fields of activity of each profession, clients would not seek the assistance of professionals as frequently as they do and the case for regulation of the professions would be substantially weakened if most clients could understand and evaluate the tasks performed by professionals on their behalf. The harm caused by incompetence is best recognized by unsophisticated clients when it can be (apparently) objectively ascertained (the floor of a newly-built house collapses), when it is identified (apparently) by a knowledgeable third party (a tax planning device is rejected by the appropriate ministry, or a building department rejects plans as "inadequate"), or when it takes on a familiar and distinctive pattern.²⁹ To the extent that these features are absent, and that the harm can be known by subjective evaluation only in any professional field, unsophisticated clients are unlikely to recognize it.

In other cases, incompetence might not manifest itself in harm to the client: the consequences that would normally follow from incompetent performance might be neutralized by the timely intervention of

another professional (a structural engineer notices and corrects an architect's design error or vice versa), or the client's interest in the matter might expire before harm can be caused (the client sells the poorly-designed structure or the borrower decides not to take up the loan which the lender was about to make on the strength of an incompetently-prepared balance sheet).

While more sophisticated clients might be better able to perceive harm caused by incompetence, or to perceive incompetence even in the absence of harm to their interests,³⁰ such clients are unlikely to complain to the disciplinary (or any other) agency.³¹

(iib) Client awareness of complaint mechanism

Even when a client perceives incompetence in the professional services received, a complaint is conditioned on knowledge of the existence of the disciplinary (complaint-receiving) mechanism and of its interest in receiving complaints of that nature. It is frequently hypothesized that individual clients are rarely aware of professional disciplinary agencies.³² To the extent that the hypothesis can be supported, the discipline mechanism is being systematically deprived of potentially-valuable inputs. The problem can frequently be overcome by increasing effective publicity of the agency's existence and interest.

(iic) Incentive to complain

Even though aware of perceived incompetence and the existence of a discipline and public complaint mechanism, a client might not choose to record a complaint. The client would be most likely to complain when some incentive to do so is perceived. The primary incentive is

likely to be related to the complaint resolution function: a client will complain in the hope that the disciplinary agency's intervention will compel or induce a response by the professional favourable to the client. Clients who perceive better means of inducing the professional to respond in the desired fashion will be unlikely to complain to the professional discipline agency. Thus sophisticated and substantial clients can exercise dispute-resolutive power effectively by complaining to other (usually more senior), partners or principals in the firm or company involved, or by threatening to withdraw their custom in future. Such clients complain to discipline agencies most infrequently. Similarly, employers of professionals do not express their displeasure with an employed professional's competence by complaining (other than to the professional) and ultimately resolve problems of perceived incompetence by terminating the employee's service.

In the end, it is largely individual clients, and particularly those engaging professionals on a one-time basis and lacking the ability to threaten effective economic harm by withdrawal of future business, who complain to the disciplinary agencies. This phenomenon produces a significant constraining effect on discipline in that individual clients tend to be serviced by smaller professional firms or companies, or by sole practitioners. To the extent that discipline agencies rely on client complaints as the source of disciplinary inputs the discipline mechanisms will tend (insofar as they deal with competence matters), to become systems for assuring the competence of smaller practitioners, and will fail to address such competence problems as are posed by practitioners in larger firms or companies serving larger, more sophisticated clients.

Even though individual clients are those most likely to complain, discipline systems frequently produce important "filtering effects" which limit the quantum of complaints actually registered to figures significantly below the number of potential complainants. Individual clients are exactly those least able to perceive harm or know of the disciplinary agency's existence or concern: only a few of those clients who believe that their professional performed poorly will complain. This "filtering effect" is exacerbated by procedural requirements which may be imposed by particular disciplinary models. Thus many discipline agencies will consider written complaints only, to the exclusion of oral complaints. Some require written and sworn complaints. Virtually none will permit the complainant to remain anonymous. Although plausible reasons support these requirements,³³ their filtering effect cannot be denied. The requirement of writing may deter some potential complainants: the fear of loss of anonymity and of possible reprisals by the professional complained about may daunt others. That such dissatisfied clients may not be particularly adamant and forceful is beside the point: because of these requirements, some (possibly valid) complaints are lost. Other related matters contribute to further filtering. The fear of "becoming involved" or that valuable time will be required to appear before the disciplinary agency may deter some complainants. Some complainants may fear that complaint will cause the professional too much trouble for what is perceived to have been a minor fault. On the other hand, some complainants may demur, fearing that professional solidarity will turn the effort of registering a complaint into an exercise in futility.

Procedures and institutions exist to diminish the constraining effects of such systematic incidents. Examples of available techniques are: publicity of the complaints mechanism and of its achievements; abolition of unnecessary formalities and availability of assistance in satisfying those remaining; the possibility of the assistance of an intermediary in framing and presenting complaints; the availability of an effectively-publicized review mechanism to assure complainants that their complaints are considered impartially by the disciplinary agency; the introduction of programs designed to enable clients to judge better the quality of professional services rendered to them; and the introduction of additional incentives to complain (such as, for instance, the availability to the disciplinary agency of a compensation fund from which awards could be made in cases of proved incompetence).

(iii) Complaints by other professionals: Professionals are not generally plagued by difficulties of perceiving incompetence or of lacking awareness of the appropriate disciplinary agency and of its concerns. The constraint inherent in a discipline agency's reliance on other professionals as a source of inputs derives from the oft-alleged reluctance of professionals to report instances of perceived incompetence of fellow professionals.³⁴ The constraint is likely most pronounced in smaller geographical areas or in specialized fields of practice, in which professionals share ties of cordiality or friendship, as well as of professional calling.

When actually registered, complaints by professionals against other professionals appear to be a fruitful input into disciplinary proceedings.³⁵ Such reporting is encouraged by insurance arrangements that distribute the costs of professional incompetence among other professionals or by the establishment of a fund (financed by a periodic levy on members of the profession), to compensate victims of incompetence. The required contributions operate to create incentives to self-police more effectively. Some professions have expressly authorized reporting of perceived incompetence. Others have made it a positive ethical duty to report such instances: failure to report is itself a breach of professional ethics. Some professions attempt to encourage professional reporting by slightly less direct means. Attempts can also be made to encourage or require professionals serving in institutions uniquely suited to noticing incompetence to inform the disciplinary agency.³⁶

(2) INVESTIGATION AND ADJUDICATION OF ALLEGATIONS OF INCOMPETENCE

Important constraints thus limit the general utility and practicality of each source of information. A wholehearted attempt to employ discipline effectively to control incompetence requires the stimulation of several sources. The institutions and procedures by which disciplinary inputs are received, evaluated, and transmitted into further disciplinary or related channels may also limit the effectiveness of a discipline mechanism.

In most professions, and in all disciplinary agencies under study by the Professional Organizations Committee, important decisions about the progress of disciplinary inputs are made at three stages:

- (i) the input (usually a complaint)³⁷ must be regarded by a telephone receptionist or mail-opening secretary as properly raising a matter of concern to the organization addressed; a permanent and more senior administrative officer must review the allegation, possibly gathering preliminary or even substantial further information and decide that the complaint should be pursued;
- (ii) the matter is usually reviewed by a committee of the agency and judged to present an apparent case of incompetence; and
- (iii) a discipline committee, either alone or in conjunction with other governing members of the agency must find incompetence, impose sanctions and make ancillary orders. Occasionally, the procedure will begin at the second or third level and sometimes it can be fully concluded at the third level.

The institutions and process by which decisions to proceed or otherwise are made at each of these stages may diminish the contribution of discipline to guaranteeing continuing competence. Of primary concern here is agency orientation: what is the agency's

interest in competence; how is incompetence to be defined; what funds are made available for investigation of complaints and for the prosecution of disciplinary proceedings? However, particular features or consequences of that orientation can operate to produce constraints on the system as a system.

(i) Receipt of Complaints

The powers of administrative personnel, and the control exercised over them in the performance of their duties at the early stages are vital. If these administrative officers do not share the general agency orientation to discipline; if they are not sensitive to some of the constraints on inputs (particularly on individual client complaints); and if there is no effective review of their actions, substantial filtering of inputs will take place at these levels and the disciplinary mechanism will be deprived of a number of inputs which might properly have been proceeded upon.

A discipline agency must ensure that each person who might be exposed to inputs shares the agency's orientation. A divergence could be particularly telling where, for instance, the governing members of the agency adopt an active competence orientation while administrative personnel display passive competence or misconduct orientations. One telephone receptionist who believes that (for instance) allegations of "negligence" are beyond the agency's concern, could operate to filter out a substantial number of complaint inputs. The danger is particularly great where the agency's orientation generally is undergoing evolutionary change.

Agency investigatory or disciplinary committees, or individual members of them are more aware of, involved in, and responsible for agency disciplinary policy-making than many members of the administrative staffs. Where a complainant cannot expect or require such a committee or member to review denials of jurisdiction by administrators, the risks inherent in assuming a universally-shared orientation are increased.

All recipients of complaints must also be sensitive to the frequent inability of individual clients (usually the largest body of complainants) to frame complaints in terms meaningful to and ordinarily adopted by professionals and agency personnel. It has been noted frequently that client complaints about "professional fees" or about "delay", often comprehend complaints about the quality of professional services. Similarly, clients who complain that a professional has "erred" or "performed negligently", may be making poorly-phrased allegations that the professional has performed recklessly, with wanton disregard of the client's interests, or even "incompetently" in the narrow sense of lacking minimum skills.³⁸

Personnel who receive complaints unaware of these limitations on client sophistication may prevent the discovery of instances of incompetence properly within agency jurisdiction. An agency which adopts a passive competence orientation might have a significant number of complaints filtered out by a telephone receptionist who advises that "fees matters" are beyond agency jurisdiction; while an agency which adopts a misconduct orientation and handles incompetence only in cases of demonstrated lack of capacity might suffer a complaint to be discarded

because the complainant was told that the agency did not consider "negligence matters". The more senior and central administrators are more likely to have the experience and awareness to perceive agency interest behind poorly-framed complaints. To the extent that agency disciplinary jurisdictional decisions can be made only at or above such levels (stage (ii) above), the substantial dangers of accidental filtering at lower levels are reduced. General agency responsibility is enhanced and the risks described above are further lessened by a requirement of decision by an investigatory or disciplinary committee member or by such a committee itself.

The level at, and manner by which a decision to renounce jurisdiction is taken can be significant to the functions discipline might perform in other ways. The information brokerage function³⁹ can be performed effectively in some circumstances only by persons more knowledgeable about the profession than the telephone receptionist (or perhaps even than the more senior administrative officer). This function might not be performed if early-stage personnel are entitled to decline jurisdiction without reference to others. To the extent that records are not kept of the input into the early stages (for instance if no records are kept of telephone complaints or of letters rejected for lack of jurisdiction), committee members (who are normally most instrumental in producing changes in agency orientation to competence problems generally and to the use of discipline in particular) are deprived of information about current client concerns: valuable changes in agency response to incompetence may not be suggested because the educational function of discipline is lost on early-stage officials. Nor should the importance to the client of

the manner of declining jurisdiction be underestimated. The client's views about the genuine interest of the agency in competence problems; about the likelihood that the agency will act against "its own"; and about whether or not it pays to complain to such an agency are all affected by the client's perception of the treatment accorded the complaint. Such matters will influence the client's decision to complain in future. The general reputation of the agency established by such client perceptions will affect the decisions of other dissatisfied clients about the desirability of complaining.

The significance of such concerns varies as alternative procedures and institutions are available to assuage them. Availability of a fees-reviewing or fees-arbitration mechanism, to which clients are referred where disciplinary jurisdiction over fees is declined, ameliorates much of the danger of loss of inputs (so long as the mechanism's activities are monitored by the disciplinary agency), and potential complainant dissatisfaction.⁴⁰ The ready availability and publicity of higher level review of initial decisions to decline jurisdiction lessens the importance of lower level determinations. Complainants can be permitted review by a higher level decision-maker, an outside and apparently more impartial body, or both. Alternatively, the complainant can be permitted to bypass the lower levels and to press a complaint before the discipline committee: the usual provision that such a complainant may be held responsible for costs incurred generally operates as an effective deterrent to such proceedings, at least where⁴¹ there is no unique incentive for the complainant to proceed.

(ii) Preliminary Investigation and Review

Even after the input has passed through the initial screening, procedural and institutional factors can continue to constrain the effective operation of discipline. The inability to obtain meaningful additional information about the allegation may prevent further consideration of the matter. Such inability may derive from inadequacy of funds or personnel available to the agency for these purposes. It may result from limitations upon agency authority to investigate important sources of evidence: in particular it may not be possible for the agency to inspect generally the practice of an allegedly incompetent practitioner or even to examine records retained by the practitioner of the transaction which forms the subject of the current complaint.

The membership composition of the preliminary investigatory committee may operate to constrain further prosecution. The participation of lay persons at this stage, as well as at later stages of disciplinary proceedings has been advocated frequently. It is alleged that as well as lending credibility to the disciplinary mechanism (particularly to that of a self-governing, self-disciplining profession), lay persons add new and different perspectives to committee activities: that, especially in respect of allegations of incompetence, lay persons will respond with greater enthusiasm than professional committee members who tend to be more preoccupied with breaches of criminal and ethical standards.⁴² Such a different perspective would

be particularly helpful at the investigatory committee stage: these committees tend to be crucial in discipline policy formation and in its implementation by preliminary administrative screening personnel. Moreover, to the extent that lay persons might be less prone to prefer a practitioner's initial explanation to a complainant's allegations both the efficiency and integrity of the disciplinary mechanism is enhanced. However, many observers have doubted that any significant effect on discipline or on professional regulation generally can be expected from the participation in the process of a limited number of lay personnel along with a far greater number of professional agency members.⁴³

Other facets of committee membership may be important. The method by which members (whether lay or professional), are appointed or elected to office may operate to guarantee or to limit the representativeness of committee viewpoints. The permissible tenure of committee members may be significant. While it is desirable for members to remain active on such committees for long enough to acquire expertise and the benefits of experience, unduly lengthy tenure may be dysfunctional. Particularly in professions in which a great number of client complaints form the major disciplinary input, extended exposure to groundless charges may produce a jaded approach to client complaints generally; a change in agency orientation towards an "active competence" position may be stifled by the orientation of long-serving members accustomed to operating under a system requiring misconduct and not familiar with the use of discipline in an active competence role.⁴⁴

Increased public accountability either through requirements of public reporting of committee activities or through the possibility of outside review or "audit" of those activities can provide some degree of assurance against many of these dangers by permitting public pressure to be exerted where risks appear to be materializing. The greater publicity of committee activities entailed in increasing public accountability may also improve performance of quality control and educational functions of discipline.⁴⁵

(iii) Adjudication

The general membership composition constraints discussed above apply equally to the investigative and adjudicative activities of the discipline committee itself. The approaches available for amelioration of these concerns at the investigatory committee stage can serve equally at the more advanced discipline committee level. However, a unique institutional issue may arise at this later stage: should "competence" matters be handled by the same "discipline committee" as that which has jurisdiction over "misconduct" offences in the more traditional sense? This issue has stimulated considerable interest, and many have concluded that the functions of disciplining competence and of disciplining misconduct should be separated.⁴⁶ It is argued that combined jurisdiction entails that too great a stigma attaches to attempts to discipline incompetence: however much agencies attempt to liberalize their use of discipline, the conception that it is a very serious device to be used only in the last resort will remain, and they will demonstrate restraint in passing matters through the process. A "standards committee" specifically established to take jurisdiction even in cases where no moral fault can be found

will tend towards less reservation in the exercise of agency power over incompetence. Similarly, where agencies have traditionally allocated only misconduct functions to discipline, and where these functions alone are no longer appropriate to more aggressive disciplinary control over competence, the historical inertia and tendency to assign priority to misconduct matters can only be reversed by the establishment of a separate committee. Such a committee can operate with less formality, adopting helpful and educational stances in the first instance, rather than the more formal and adversarial attitudes appropriate to and characteristic of discipline for misconduct. On the other hand, it has been argued that significant practical advantages ensue from allowing a single committee authority to "enquire into and deal with the total conduct of a [professional]:"⁴⁷ problems of case assignment and co-ordination are avoided and overall experience with problems in professional practice is centralized.

Requirements of procedural fairness operate to limit the effectiveness of discipline. The issue was considered generally in the McRuer Report,⁴⁸ and since 1968 it has not been seriously doubted that requirements of due process or of natural justice are desirable elements of professional discipline. Yet the effects on the efficacy of discipline of requiring particularized notice of charges; of holding hearings; of allowing counsel to appear on behalf of an accused professional; of requiring the disciplinary agency to satisfy a specified burden of proof by the introduction of admissible evidence; of requiring written and reasoned bases for decisions; and

of extensive rights of appeal, cannot be doubted. Such requirements at the very least permit those ultimately found to have performed incompetently to continue to practice unchecked pending an initial or even ultimate decision on an allegation of incompetence. They permit this period to be extended by attempts by the professional to delay the disciplinary action. The problem of delay is exacerbated where criminal or civil proceedings are pending against the professional involved: the fear that the professional may be prejudiced by the prior holding in discipline proceedings; that discipline is being abused by a client complainant seeking to exert improper pressure on the professional; or that the disciplinary agency will become involved in the subsequent litigation all operate to encourage the agency to postpone disciplinary action for the months, and not infrequently, years involved before the ultimate resolution of other proceedings.

Problems arise from the burden of proof imposed on the agency. The difficulties increase to the extent that the agency suffers from limitations on its ability to gather required evidence.⁴⁹

Similarly, and even assuming that there are no problems in arriving at an operational definition of competence, there may be difficulty in establishing the standards of capability or of skills and knowledge against which the professional's competence is to be judged. The difficulty varies among professions and different fields of practice within professions. In some fields, there exist universally-recognized standards established by international or national associations. Such standards can be as objective as

requiring the performance of particular functions before others may properly be undertaken. Failure to meet the standards is easily established. At the other extreme are those professional activities which involve a high degree of subjective professional judgment: no specific procedures are generally recognized to be essential to proper performance, and appraisal of the results of performance is not necessarily informative or indicative of the quality of the performance. There may be significant regional or local differences in practice. The perceived difficulty of setting standards may deter a disciplinary agency from dealing with all but the most gross departures from generally acceptable practice; from considering allegations of incompetence in the more subjective fields of practice or from attempting to discipline incompetence at all. In the end, the disciplinary machinery does not operate significantly to promote competence in some fields, and the educational and quality control benefits gained from even undertaking to attempt to set standards are lost.

Such concerns need not necessarily induce agency reticence. Operationally useful standards can be phrased quite generally. Extreme departures from these standards can be subjected to discipline first, and gradually, as the "case law" builds, a more refined set of standards of competence in particular instances will begin to emerge.⁵⁰ This approach avoids the difficulties implicit in attempting to foresee and to make advance provision for all possible forms of incompetent practice: it avoids the dangers of restraining innovative practice

presented by standards designed to represent the most conservative view (which may be the only view about which consensus can be achieved). Exactly these sorts of general standards are applied daily by courts confronted with professional negligence suits: damages in the hundreds of thousands or millions of dollars are awarded on the basis that the defendant did not perform at the level expected of "a reasonably competent practitioner".⁵¹ The testimony of expert professionals assists the court in establishing how such a practitioner would have been expected to perform in the circumstances. While the problem of setting standards need not deter disciplinary action, its perceived difficulty in some fields operates as a significant limitation on the range of disciplinary action undertaken.

(3) SANCTION IMPOSITION

The ability of discipline to perform competence-assuring functions is limited where the disciplinary agency lacks the power or the willingness to choose among a wide range of sanctions. The constraining effects of a narrowly circumscribed choice of sanctions increases as the agency adopts a more active competence orientation.

In an extreme case, the agency might be required either to find the accused professional innocent of all wrongdoing, or to impose such harsh sanctions as suspension or expulsion from the association or profession. Such a choice is uninviting and tends to one of two undesirable consequences: either the agency will refuse to take disciplinary action against practitioners who have performed poorly but have not demonstrated

serious and apparently-irreversible incompetence, thus limiting the agency's involvement in policing incompetence and implying that the agency condones the professional's conduct; or the agency will take action which in many cases requires the imposition of sanctions that are out of all proportion to the incompetence demonstrated and that are not adapted to appropriate management of the widely differing problems of incompetence presented to the agency.⁵²

A disciplinary agency which proposes to become actively involved in a wide area of competence supervision will find its task practicable only where its ability to impose sanctions includes rights to:

- (i) expel the professional;
- (ii) suspend the professional from practice⁵³ generally or from some field of practice;
- (iii) suspend the professional from practice generally or from some field of practice
 - (a) until a specified course of studies has been completed; or
 - (b) until the professional has satisfied a board of examiners of his or her competence generally or in a specified field of practice;
- (iv) accept the professional's undertaking to limit his or her practice in lieu of suspension;
- (v) impose conditions on the professional's ability to practise generally or in any field (including conditions of practising under supervision; not engaging in sole practice; requiring periodic inspections by the agency or its delegate; or reporting to the agency about specified matters);
- (vi) direct the professional to pass a particular course or satisfy a Board of Examiners of competence in practice generally or in a particular field within a specified time, or be suspended;

- (vii) satisfy a Board that physical handicaps, mental handicaps or problems caused by drugs or alcohol have been overcome (with suspension in aid);
- (viii) order the professional to be reprimanded, admonished or counselled;
- (ix) revoke specialty or other competence designations (either temporarily or permanently);
- (x) make such other or ancillary orders as may be appropriate or requisite.

The power to fine may be a useful sanction: the proceeds can be payable to the agency, the government or can be made available to clients harmed by incompetence (to provide incentives to report instances of incompetence).⁵⁴ The ability to assess against the professional the agency's costs of investigation and prosecution might serve to extend the agency's ability to maintain its discipline mechanism despite budgetary constraints; the power to award costs payable to the agency to an "acquitted" professional might help to allay agency fears of commencing proceedings in any but the clearest cases.

The problems of record-keeping and publicity of disciplinary activities are fully considered below. However it should be noted here that matters of recording and publicity can themselves be employed as sanctions: the significance of a reprimand to the individual disciplined may vary dramatically depending upon whether or not the facts of conviction and sanction are recorded and are available for consideration in future proceedings. The publicity of the disciplinary sanctioning of a professional either within the profession or to the public generally may increase dramatically the effective severity of a sanction.

A wide range of available sanctions, and a willingness of the agency to choose among many of them, expands the sorts of incompetence problems that can be addressed usefully by discipline. Certain incompetence problems, particularly those related to failings of requisite basic skills and knowledge can be assisted by the ability to adopt a "helpful" approach and to tailor a re-education requirement to the professional incompetence demonstrated: discipline can contribute to the increased competence of the professional so disciplined. Other forms of incompetence, especially those attributable to overwork or carelessness may be addressed better by reprimands or by sanctions requiring periodic inspection, reporting, or supervision of the professional's practice by an employer or partner. In other cases, "individual rehabilitative" ends might give way to more punitive, individual deterrent or general deterrent ends, and suspension or expulsion might be appropriate. To the extent that incompetence other than serious failings of skill or knowledge, or reckless disregard of professional duties is to be addressed by it, and to the extent that the disciplining agency is unable or unwilling to rely on diverse sanctions, the discipline mechanism is likely systematically to fail to address particular forms of incompetence.

The fact that a discipline system operates by imposing sanctions on individuals should also be recognized as constraining the system's ability to perform some disciplinary functions. Maximum punitive,

general deterrent, general professional educational, dispute resolution and professional protective functions might be achieved by adopting stern sanction policies: the impact of such sanctions would guarantee to all observers the sincerity of agency concern with competence. On the other hand, the general return on such harsh sanction investments may be outweighed by the drastic consequences of such sanctions to the professional being disciplined. Particular sanctions, or publicity of them, could militate towards the "economic death" of the disciplined professional. Such consequences may not be appropriate to the level of incompetence demonstrated. Moreover, mitigating circumstances which can be advanced frequently by errant practitioners make harsh sanctions appear to be overreactions to instant cases. The required balancing (of gain to other professionals and to the public generally against harm to the sanctioned individual), in determining sanctions is not unique to disciplinary proceedings, but its constraining effects on such proceedings cannot be denied.

(4) RECORDS AND PUBLICITY

Inappropriate record-keeping and publicity policies limit the ability of a disciplinary mechanism to perform each of the punitive, deterrent, quality control and educational, dispute resolution and profession protective functions described above.

(i) Records

Accessible recording of the disposition of disciplinary proceedings against individual practitioners is crucial to the appropriate disposition of later allegations of incompetence. Where the agency adopts a fairly narrow definition of the competence with which it is

concerned, or where it adopts a passive competence or misconduct orientation generally, agency action will not follow consequent upon individual acts of negligence or demonstrations of performance deficiencies. Agency action will ensue only where a pattern of reckless practice or of disregard of client interests appears. This pattern will not be revealed unless the records of earlier matters are available to permit the inference of "more-than-simple-negligence" to be drawn. The availability of such records is vital where agencies lack the power or the resources to investigate incompetence except in the context of a current complaint. However, it is still important even where the agency can and does conduct more extensive investigations of the general competence of a practitioner against whom a complaint has been received. The past history of the professional may be important in determining whether and how ⁵⁵ to initiate and prosecute disciplinary proceedings, and in deciding what sanction to impose: while remedial and helpful sanctions may be most functional for isolated instances of substandard performance, more stern measures might be appropriate in cases of those who have demonstrated an inability to learn from earlier experience. The professional's discipline record might serve to ameliorate some of the concern that arises from attempting to achieve general professional gains at the expense of particular practitioners who can advance mitigating circumstances in individual cases.

An agency will be hampered in performing quality control and educational functions to the extent that it lacks ready access to the records of inputs into the system and outputs from it. The ability to identify vulnerable areas of practice depends upon

analysis of inputs and dispositions: identification in this manner is critical to attempts to narrow the focus and to evaluate the effectiveness of peer review, continuing education, and more aggressive disciplinary programmes. Reporting to the profession about ways to avoid unintentional client grievances is predicated upon the ability to recognize the activities and deficiencies which seem to give rise to such grievances. ⁵⁶

It is important to the achievement of these ends that adequate records of agency activity at all stages be available to agency personnel. The filtering effect produced by passage through the disciplinary process means that inaccessibility to inputs and outputs at the very early stages entails loss to the agency of valuable information and experience.

(ii) Publicity

The publicity of the disposition of individual matters and of agency activity generally is vital to the performance of all discipline functions. The profession is made aware of the seriousness of agency concern with discipline; vulnerable areas are identified to practitioners and procedures available for the avoidance of difficulty are described; the effectiveness of punitive sanctions is assured by increasing awareness that the professional sanctioned is (during some period or permanently; absolutely or in some field), barred from practice. The force of sanctions is enhanced even by publicity within the profession alone. The shaming effect of discipline is increased, and its economic impact heightened by such publicity (particularly where professionals control the workload of other professionals by engaging the latter themselves, or by referral or recommendation of them).

The utility of discipline can be increased by publicity outside the profession to the public generally. The publicity increases public awareness of and confidence in the impartiality of the disciplinary agency and of its interest in less than serious misconduct matters. The effect is thus to overcome some constraints on client reporting, to stimulate clients to report more freely and thereby to increase the efficacy of discipline generally. To achieve these ends, the agency should publish the results in individual cases as well as periodic descriptions and analyses of agency activities.⁵⁷

Two important factors combine to limit agency willingness to engage in widespread publicity of disciplinary activity. First, publicity can be particularly prejudicial to the individual practitioner involved. Grave economic and professional peer consequences might follow upon disclosure of as little as that an allegation has been made against a practitioner, even before any action has been taken to investigate the merit of the allegation. Even after a finding of incompetent performance in disciplinary proceedings, the harm to the individual of public disclosure of the finding and sanction might produce consequences out of all proportion to the incompetence proved. This danger is particularly apparent in cases in which counselling is found to be the appropriate sanction or in which the helpful orientation of requiring re-education is adopted in preference to punitive sanction. A requirement of publicity of all disciplinary action with these attendant grave consequences might

constrain the disciplinary agency's efforts to handle minor and reversible incompetence matters without the formality and procedural guarantees attendant upon discipline for serious misconduct offences. While these fears may be genuine, they are not insurmountable. Publicity of the nature of incompetence demonstrated and of agency disposition of the matter, without disclosure of the disciplined professional's identity may be appropriate and adequate for performance of the disciplinary functions in some cases: in others aggregate data may suffice,⁵⁸

Secondly, concern for professional or regulatory independence, and fears that publicity of poor practice will tend to tarnish the reputation of the profession generally, prompt a reticent response to suggestions for increased publication. If the competence regulator is performing adequately, increased publicity can only "serve the interests of the bloody-minded".⁵⁹ Such a response fails to recognize the significance of constraints on discipline proceedings, particularly those which inhibit full realization of the potential of client complaints in promoting competence in individual practitioners and in the profession generally. Wider access to information about agency disciplinary activities might also reveal significant lacunae in the scope of competence problems currently addressed by the mechanism and generate helpful suggestions or public pressure for a shift in agency orientation towards a more active competence orientation.⁶⁰

The extent to which the effectiveness of any particular discipline system will be constrained by the limitations discussed above will be affected by agency orientation and by attempts to implement institutional arrangements designed to ameliorate the significance of the limitations. However, even in the most carefully constructed and aggressively maintained mechanism, systematic forces limit the impact which discipline can produce on competence. The role allocated to discipline should anticipate these systematic constraints, recognizing that alone, discipline can be expected to address only a limited class of cases and that much of its utility pertains to its ability to guide and supplement other attempts to promote continuing competence.

PART D - DISCIPLINE IN THE LEGAL PROFESSION

I. SOURCES OF INFORMATION

This Part describes and analyses the operation of the discipline system maintained by the Law Society of Upper Canada ("the Law Society"), the Governing Body of the self-regulating legal profession.⁶¹ The information presented here has been gleaned from examination of Appendix B to the Research Directorate's Staff Study, "History and Organization of the Legal Profession in Ontario";* from other bibliographic material describing the operation of the Law Society discipline system (largely compiled by Steven Wilson); from a report prepared for the P.O.C. by Mrs. Heather Werry ("the Werry Report"); from a report prepared by Ms. Connie Nakatsu on the P.O.C. survey of law clients; and from interviews with administrative personnel, Benchers, Judges, a Master of the Supreme Court of Ontario, and a number of lawyers including lawyers engaged in the active practice of law and lawyers in academic and other fields.

II. OUTLINE OF DISCIPLINE SYSTEM

The legislative framework for the system is provided by two major groups of instruments:

(a) The Law Society Act, and Regulations and Rules established under it. These instruments establish the jurisdiction, organization and procedure of the discipline system; and

(b) the Law Society Professional Conduct Handbook and the Canadian Bar Association Code of Professional Conduct. The Handbook is a collection of "Rulings" almost exclusively initiated by the Law Society's Professional Conduct Committee (and later approved by Convocation), specifying particular practices

*Referred to below as "History and Organization of the Legal Profession"

which are considered to constitute "professional misconduct". The Code is a more extensive treatment of the lawyer's professional conduct responsibilities generally: it was promulgated by the Canadian Bar Association, a national voluntary association of lawyers, and was adopted by the Association's Council on August 25, 1974. It replaced the far less elaborate and largely hortatory "Canons of Legal Ethics" which had been passed by the Canadian Bar Association in 1920. These "Canons" form the content of Ruling 1 of the Professional Conduct Handbook. The Code has been approved in principle by Convocation, and the Professional Conduct Committee is currently integrating the Code with the existing Handbook. Until the integration has been completed, the current Handbook remains effective. [Relevant excerpts from these instruments are reproduced in Appendix I.]⁶²

The discipline system is composed of administrative and support personnel, the discipline committee, Convocation, the Courts and the professional conduct committee. The administrative personnel are responsible for most of the activity involved in initiating disciplinary proceedings, as described below. This group is led by the Secretary of the Law Society who is assisted by a Deputy Secretary and three Assistant Secretaries (all lawyers). The group includes support staff of telephone receptionists, clerks and secretaries. As well, there are five chartered accountants on the Law Society's staff. The accountants investigate lawyers' books to uncover breaches of the rules governing administration of lawyers' financial affairs. These accountants are only very peripherally involved in the discipline process insofar as the process handles problems of incompetence: they are most concerned with offences of misconduct (defalcations) or failure to follow the Law Society's elaborate accounts - regulating strictures.

The discipline committee is composed of all of the members of Convocation including the forty elected Benchers, the honourary and ex officio Benchers, and the four lay Benchers authorized to be appointed under s. 23(a) of The Law Society Act. It usually sits in panels of three to perform the hearing and sanction recommendation functions described below.

The role of Convocation, which is composed of all Benchers of the Law Society, is described below: the Courts, and in the first instance, the Divisional Court, are available to persons against whom disciplinary sanctions have been ordered. The professional conduct committee is involved to the extent of elaborating the concept of "professional misconduct" through Professional Conduct Handbook Rulings and through advice to lawyers who request it about particular courses of conduct. The professional conduct committee is only peripherally involved in discipline for incompetence: the Rulings and committee advice are limited almost exclusively to questions of ethics, advertising, professional courtesy between lawyers and avoidance of conflicts of interest that may arise between lawyer and client.

Investment by the Law Society in discipline is heavy. The costs of salaries for the Secretary and his assistants, salaries for the audit department, and sundry items, such as travelling expenses for Benchers and auditors, outside counsel, reporters, transcripts, witness fees and the like have been budgetted to be \$402,045 for the fiscal year 1977-78. A total of \$15,000 is expected to be recovered in Law Society costs ordered to be paid by lawyers disciplined. The

net expenditure is thus projected to be \$387,045. The discipline budget is about one sixth of the Law Society total budget: the actual costs of discipline would be higher if overhead expenses and incidental costs (telephone charges, postage) were added to the figures presented. The sum projected involves an expenditure of about \$35 per Society member. The actual figures for 1976-77 were:

Expenditures	\$400,782.00
Receipts	<u>58,891.00</u>
Excess of expenditures over receipts	\$341,891.00 ⁶³

It should be noted that most of the high-cost-producing disciplinary activities of the Law Society are related to professional misconduct that is only remotely related to competence: a very great percentage of formal disciplinary proceedings is composed of criminal misconduct and dishonesty matters, and the costs of both continuing auditing investigations and "blitz audit" procedures make up a very substantial proportion of the discipline budget expenditures. It was impossible to procure an estimate of the costs of discipline attributable to the use of discipline in incompetence matters alone, or attributable to the administrative and other expense of receiving and processing competence-related complaints.

III. DISCIPLINARY JURISDICTION

The Law Society has disciplinary jurisdiction only where the lawyer involved has been found "guilty of professional misconduct or of conduct unbecoming a barrister and solicitor ..." ⁶⁴ The Law Society regards "professional misconduct" as referring to "misconduct

in the course of a member's professional activity such as in the handling of trust funds" and feels that "conduct unbecoming a barrister and solicitor" refers to private misbehaviour which reflects upon the honour of the Bar. A classic example [of "conduct unbecoming"] is an English instance where a solicitor was struck off [expelled from practice] for having been convicted of keeping a common bawdy house."⁶⁵ It is the Law Society's view that jurisdiction over "professional misconduct" enables the discipline system to address cases of negligence or incompetence even when there is no "element of mens rea or criminal intent". It feels that it can discipline lawyers when there is "a course of conduct which demonstrates incompetence, misfeasance or nonfeasance ... a pattern or error or default", but that it has no jurisdiction over cases of "mere oversight, inadvertant negligence or excusable ignorance". The Law Society feels that its current powers are appropriate to the role that it has cast for discipline and "is not seeking additional powers and does not consider that there is need for additional powers".⁶⁶

The authority to discipline for incompetence is granted in language far more express (than that granted in respect of "professional misconduct"), in the legislation authorizing discipline in the legal professions of other provinces and in the legislation governing other professions under study by the Professional Organizations Committee. Although it is submitted that jurisdiction over "professional misconduct" would be construed by a court today to permit the exercise of authority over those cases in which the Law Society has stated its willingness to act, the matter is not free from doubt. Some older judicial decisions have held

that "negligence, even gross negligence, is not in itself a form of professional misconduct" (in the context of judicial disciplinary authority over "professional misconduct"), and some agencies have obtained or are seeking clearer legislative authority over incompetence in light of such doubts.⁶⁷

Relying on the operational description of "professional misconduct" described above, the Law Society systematically declines jurisdiction over a number of matters which come to its attention. Complaints by creditors of lawyers in respect of financial obligations outside the scope of the lawyer's practice are seen as clearly outside Law Society jurisdiction: the lawyer involved is not even notified of the complaint in these cases. Although complaints about lawyers' fees are "frequent", complainants are told that such matters are within the jurisdiction of the taxing master and are informed of the location of the nearest taxing office. This procedure is followed even where, as is "often" the case, the right to taxation has expired by the time the complaint is registered.⁶⁸ Similarly the Law Society declines jurisdiction where the complainant is "really seeking legal advice. In these situations the complainant may be informed about the [Law Society's Lawyer] Referral Service."⁶⁹ Complaint matters that are being litigated in the courts, unless they involve a misappropriation or a failure to account, are usually not investigated by the Law Society until the courts have made their determinations. It is felt it would be unfair to the solicitor involved if there were to be an investigation by the Law Society while the action was pending: this might force acceptance of an unjust settlement. The Law Society's usual practice is to

inform complainants to write back at the conclusion of the trial if they still feel the solicitor to be guilty of professional misconduct and the Law Society will investigate the matter then.⁷⁰

The Law Society will "sometimes" decline jurisdiction over a complaint alleging "negligence or incompetence".⁷¹ When a complainant alleges that the lawyer "represented the client poorly, failed to interview witnesses, neglected to [report the existence of a registered encumbrance] ... etc. ... the Law Society's usual response is to inform the complainant that only a court of law can determine whether a solicitor was guilty of negligence and more important can award damages. The complainant is also informed that the Law Society is only an administrative body and cannot give out legal advice so that if the complainant wishes to pursue his negligence claim he must seek other counsel."⁷² However, while the Law Society does decline jurisdiction in these cases, and if the complaint was written (i.e., where jurisdiction was not declined when the complainant telephoned), the Law Society will write to the lawyer involved asking for comments on the enclosed complaint and requiring the lawyer to comment on it: the explanation is forwarded to the complainant.

IV. INFORMAL DISCIPLINE

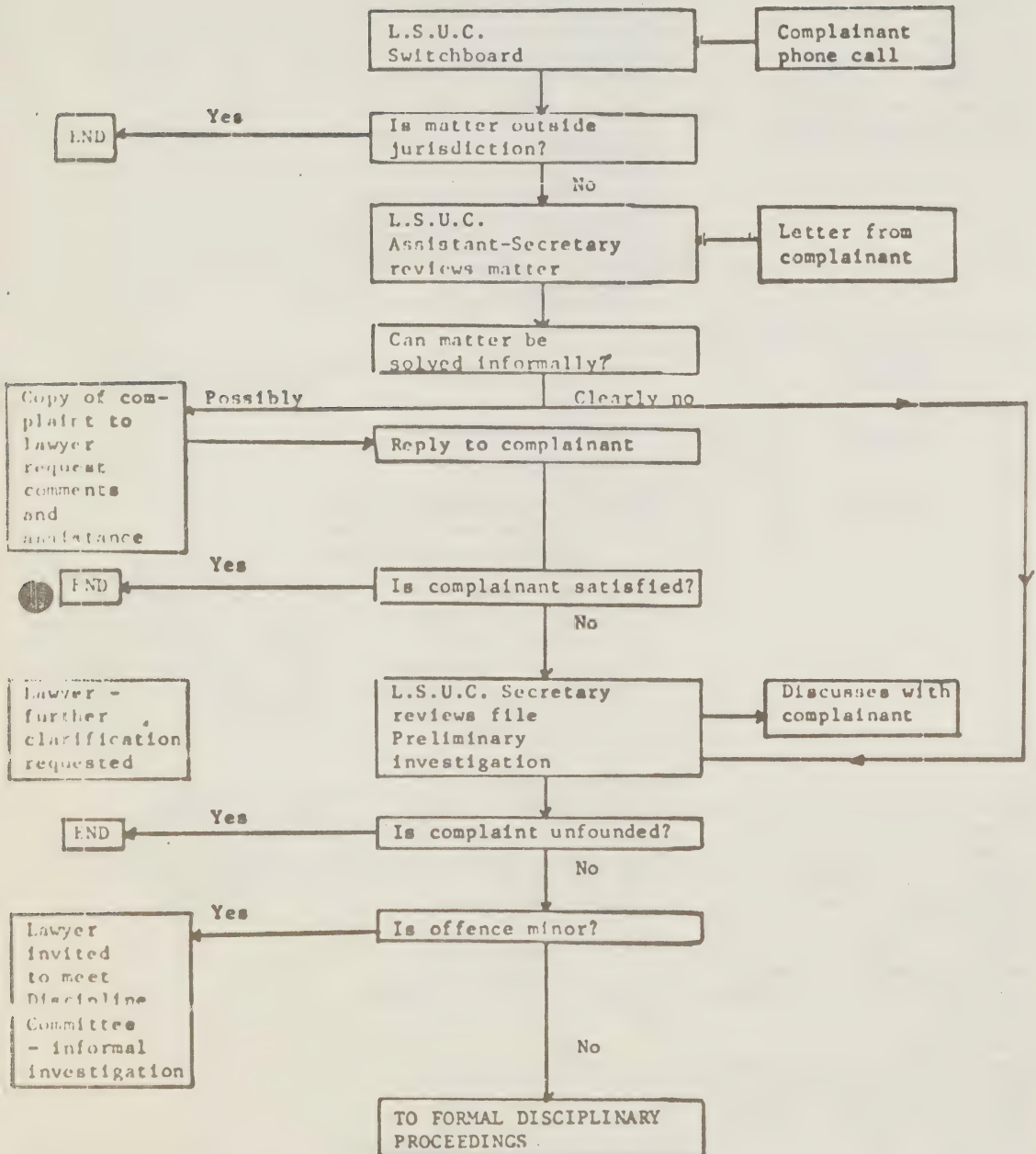
The disciplinary mechanism of the Law Society consists of two prongs: the "informal complaint" procedure and the "formal complaint" procedure. The informal complaint procedure is that most frequently used where allegations of professional misconduct are brought to the attention of the Law Society by public complaint. The process largely involves clarification of the circumstances in which the alleged misconduct occurred by sending the written complaint to the lawyer complained about and requiring the lawyer to comment on it. The process can terminate by the Law Society's acquittal of the lawyer of all misconduct; by its declining jurisdiction; by its issuing an Invitation to Attend at a meeting of the discipline committee to enable the committee to make an informal investigation of the matter ("where a member may have been guilty of a minor breach of discipline or where information indicates that there is a possibility that the member's conduct may result in a breach of discipline"), and to receive the "advice of the committee; or by the initiation of a formal complaint against the lawyer, either before or after the issuance of an Invitation to Attend.

The formal complaint process, largely reserved by the Law Society for serious misconduct offences is commenced by the swearing under oath of a complaint against the lawyer. The process can terminate in acquittal of the accused lawyer or in sanctions as serious as disbarment, suspension or fully publicized reprimand.

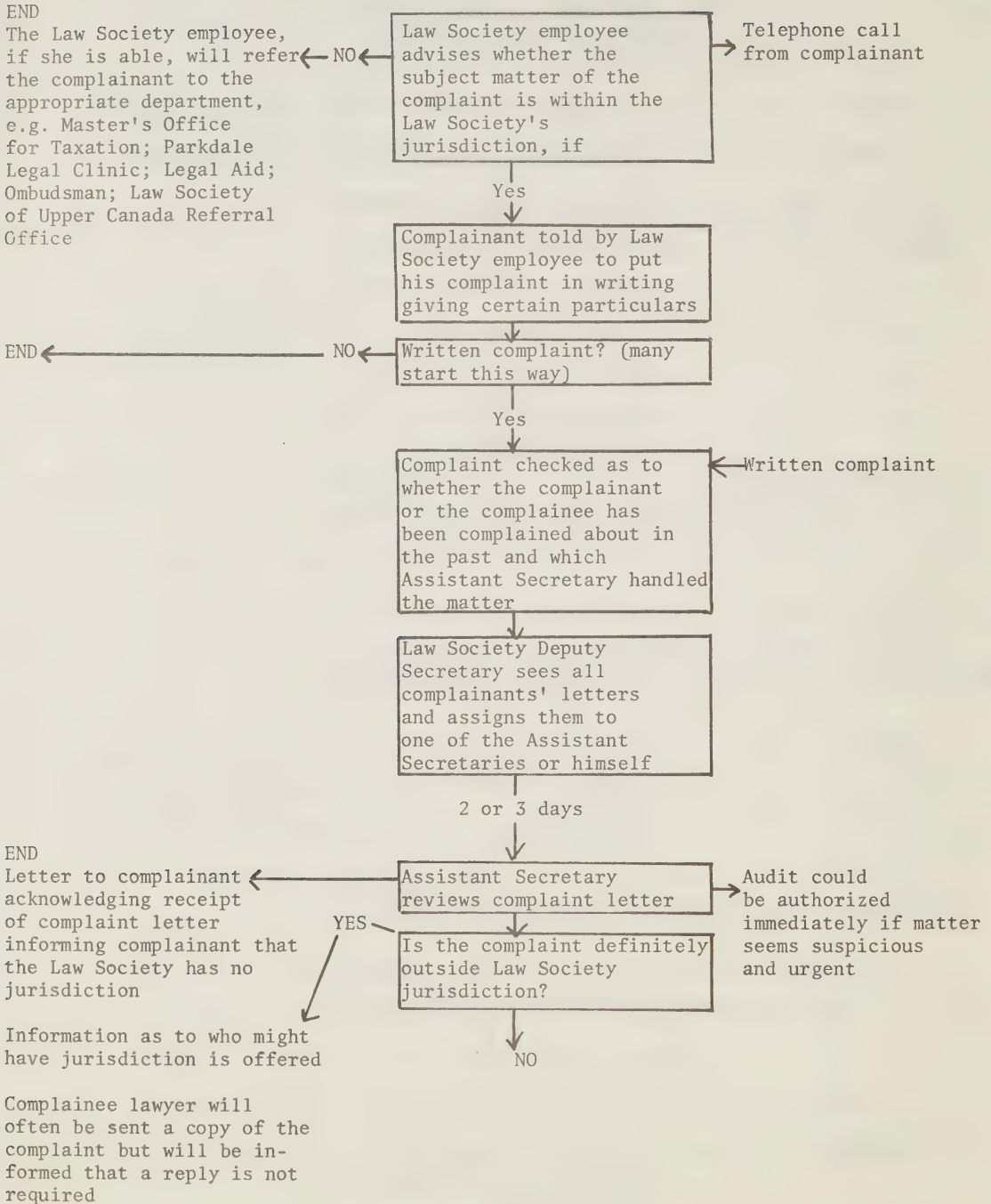
The informal complaint procedure is described graphically in a very simplified form in Figure I, and in more detail in Figure II.⁷³

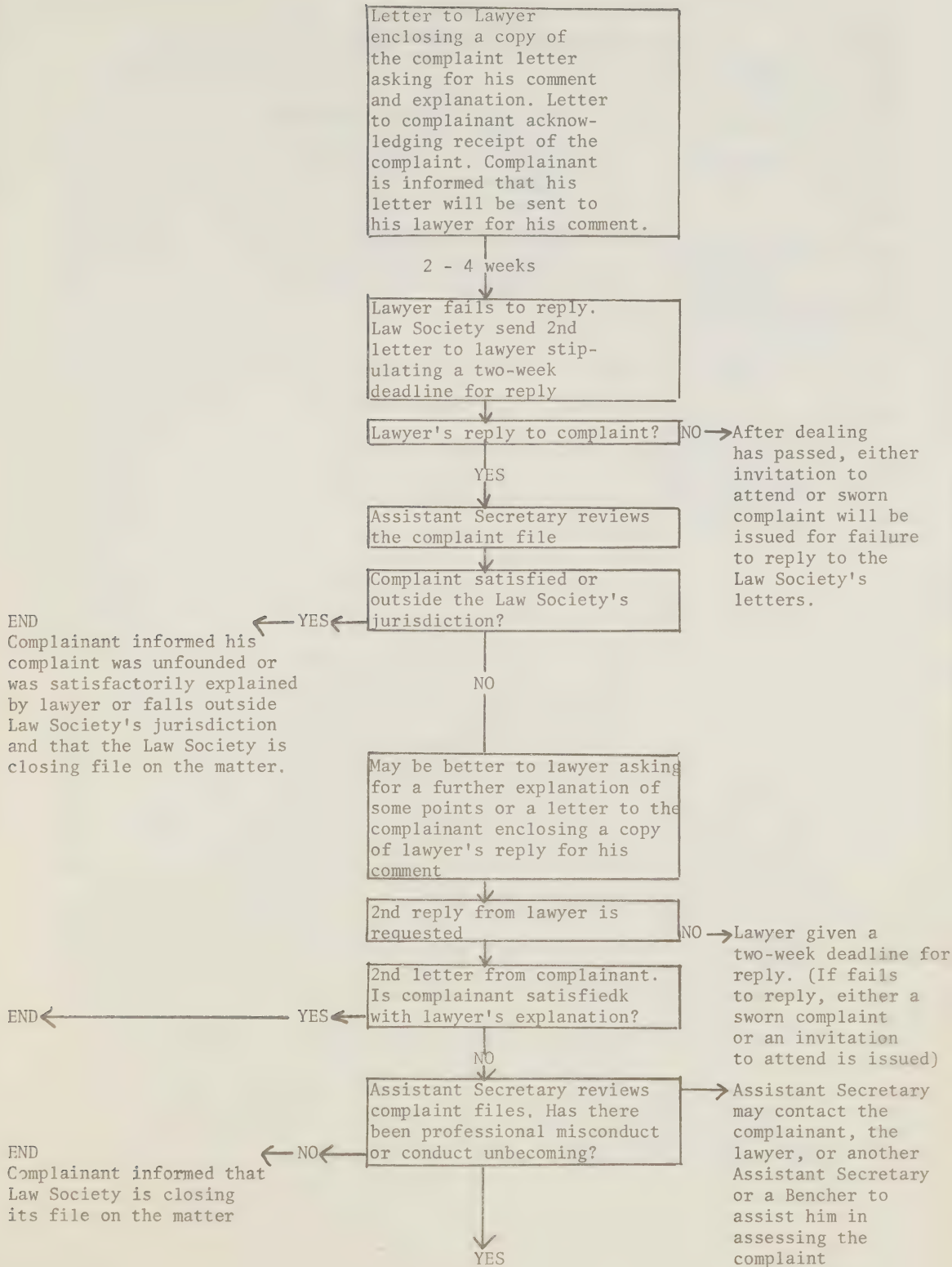
FIGURE 1

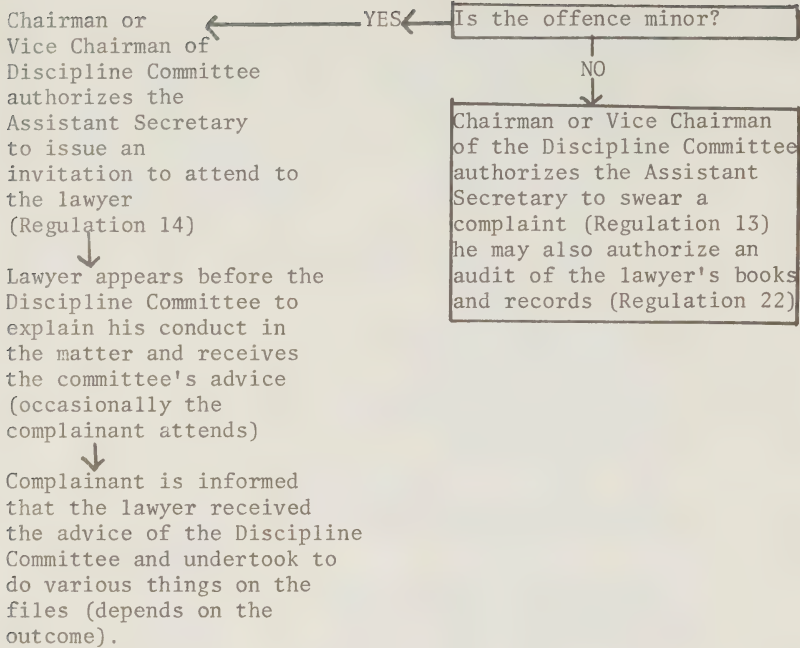
THE LAW SOCIETY OF UPPER CANADA
INFORMAL COMPLAINT PROCEDURE



Informal Complaint Process







The majority of all disciplinary cases are initiated by a client's complaint about a lawyer. The Law Society does not actively advertise that it investigates complaints about lawyers. It does not believe that anything it "might do over and above what it already does would add appreciably to the public's awareness of its existence and activities". The Law Society does not believe that it should attempt to stimulate further complaints from the public. It believes that this course of action could be advanced "only on the assumption that a substantial number of clients suffer from the incompetence of their lawyers but are not aware of their position or what they can do about it". The Law Society "does not admit the validity of [this] assumption."⁷⁴ In 1977, the Law Society received 1,510 complaint letters. In 1976, 1,587 complaint letters were received. These figures seem to represent about the average number of complaints that would be expected to be received by the governing body of a legal profession composed of approximately 11,000 members.⁷⁵

The Law Society insists that complaints be in writing before they will be investigated. The Law Society asserts two bases for requiring writing. First, the lawyer might claim solicitor-client privilege when contacted by the Law Society about the subject matter of the complaint. Secondly, the Law Society staff might not describe the complaint of the client accurately. The Law Society asserts that it has been its experience that frequently what was thought to be the subject matter of a complaint from a telephone conversation turned out to be something quite different when put in writing.

When a prospective complainant telephones the Law Society and indicates a wish to complain about a lawyer, the caller is referred to one of two secretaries to the Assistant or Deputy Secretaries of the Law Society. This secretary determines whether or not the Law Society has

jurisdiction over the matter. If the subject of the complaint involves negligence, fees, an attempt to obtain legal advice, or one of the other matters regarded as outside the Law Society's jurisdiction, the secretary will inform the caller that the Law Society does not deal with such matters. The secretary may attempt to guide the complainant to an appropriate institution for the handling of such subjects. For instance, a client complaining about fees claimed by a lawyer may be referred to the nearest taxing office. If the matter appears to be within the Law Society's jurisdiction, the complainant is told to put the complaint in writing naming the lawyer involved, and that the Law Society will forward a copy of this letter to the lawyer for comment. Callers who indicate inability to write may be advised to have a friend put the complaint in writing and then to sign it. On rare occasions, the secretary will invite the complainant to the Law Society premises and a member of the Law Society staff may assist the complainant in drafting the required letter.

There is no record kept of incoming telephone complaint calls. However, it is clear that there is a substantial filtering effect between the number of telephone callers and number of complaint letters actually received. The employee who handles most of the complaints from the public indicated that the number of calls would not reflect the number of real complaints in any event. According to her, most of the calls have nothing to do with the Law Society: "Many are asking for legal advice or the caller is upset because he can't reach his lawyer right away".⁷⁶ At the caller's insistence, however, the call may be transferred to one of the Assistant Secretaries for further consideration.

When written complaints arrive, the identity of the complainant and the lawyer are checked to see whether any previous complaint involving either of them has been made to the Law Society and to ascertain which Secretary handled such complaints in the past. The Law Society has on file a list of perennial complainants, most of whom it regards as eccentric or worse.⁷⁷ Where a letter from one of these complainants is received, a simple acknowledgement of the letter is sent to the complainant.

All written complaints are seen by the Deputy Secretary who assigns them to one of the Assistant Secretaries or himself for follow-up. Usually, the same secretary will handle all complaints about a particular lawyer so that the Secretary is aware of the lawyer's entire complaint history. Records of written complaints registered against lawyers and of the disposition of these complaints are retained by the Law Society. The Secretary assigned to the complaint reviews the letter in the instant matter. If the complaint raises an issue regarded as within Law Society jurisdiction, the complainant is notified that the complaint will be sent to the lawyer for comment. If the matter is regarded as outside the jurisdiction of the Law Society, the Secretary in charge of the file will notify the complainant to that effect, and unless the client persists, the matter is regarded as closed at that point. The consequences of persistence are described below.

Frequently the letter from the Law Society produces a flurry of activity by the lawyer. As this is often what is wanted by the client, complainants are "sometimes quite pleased with the Law Society's intervention". The Law Society notes, however, that it will not refrain

from disciplining a lawyer just because action was finally procured when the Law Society intervened.⁷⁸

If no reply is received from the lawyer within approximately three weeks, another letter is sent by the Law Society establishing a two-week deadline for reply. A copy of Ruling 20 from the Professional Conduct Handbook, which provides that failure to answer letters from the Law Society is itself professional misconduct, is enclosed with the letter. If no reply is received after the deadline date has passed, an Invitation to Attend or a sworn complaint will be issued in respect of the failure to answer the request for comments. Whether the Invitation to Attend or sworn complaint procedure will be chosen seems to depend upon which Secretary is handling the file.

On receipt of the lawyer's reply the Secretary in charge will review the complaint file. In most cases the Secretary feels either that the circumstances of the complaint have been explained satisfactorily or that no case of professional misconduct or conduct unbecoming a barrister or solicitor appears. No outside investigation of the lawyer's competence is undertaken, although if the complaint is suggestive of financial irresponsibility, the Secretary may pass the matter on to the Law Society accountants, and the lawyer complained about may become the subject of a Law Society unannounced audit.

Where the Secretary in charge decides that the lawyer's answer is satisfactory, the complainant is sent a copy of the lawyer's letter and is told that the Law Society is closing its file as it can find no professional misconduct. "In assessing whether the [lawyer] has answered the complaint his version of the facts will generally be accepted over the complainant's unless there is other evidence to corroborate the complainant's story".⁷⁹ Sometimes the complainant

is invited to comment on the solicitor's explanation. If the complainant fails to respond the Law Society will treat the matter as closed. Occasionally the Secretary in charge may feel the need for further information and may write to the lawyer asking for greater clarification of some point. A lawyer can be disciplined under Ruling 20 for failing to reply to a second request for information by the Law Society.

Rarely, the Secretary in charge will consult a member of the Discipline Committee who is knowledgeable in the field of law involved in a complaint, for assistance in assessing the lawyer's response. Interviews with Law Society personnel indicated that reluctance to consult Benchers stems from one of two causes: should the matter proceed further, the prior consultation with a Benchers would (under rules of procedural due process), disqualify that Benchers from sitting on the Discipline Committee hearing the charge; and since Benchers are not paid, and as they already contribute a great deal of their time to Law Society activities, attempts are made to limit their involvement at this early stage to as little as is possible. It is more common for a Secretary to consult a member of the Discipline Committee where the complainant is unwilling to accept the Law Society's treatment of the complaint. The Law Society finds that complainants are more likely to submit to its assessment of the complaint where the client "knows that a senior member of the Discipline Committee has agreed" with such disposition.⁸⁰

If the Secretary's review indicates that the lawyer may have been guilty of misconduct, the matter is referred to either the Chairman or Vice-Chairman of the Discipline Committee for instruction. If the Chairman or Vice-Chairman feels that the lawyer was entitled to act in the manner indicated, the complainant is informed that a senior member of the Discipline Committee has found that there was no professional misconduct. If the Chairman or Vice-Chairman feels that there may have been misconduct but that the breach was minor, the Chairman or Vice-Chairman will authorize the Secretary in charge to issue an Invitation to Attend pursuant to Regulation 14 (under The Law Society Act). Where the breach is regarded as more serious, the Chairman or Vice-Chairman will authorize the issuance of a sworn complaint and the formal complaint procedure will be commenced.

When notified of the Invitation to Attend the lawyer is usually advised that it is not necessary to consult counsel. Invitations to Attend are quite informal: no reporter is present and there is no publication whatsoever of the event. The complainant is not usually present. If the lawyer elects to attend when invited, the Committee normally asks for an explanation of the behaviour revealed by the complaint and answer. The lawyer often receives the advice of the Committee, and quite frequently undertakes to resolve the matter in some way. In practice the Committee may chastise a lawyer on an Invitation to Attend but it has no power to impose sanctions. Moreover, the Discipline Committee has recently decided that failure to attend upon an invitation to do so, is not in itself professional misconduct.

The Discipline Committee may decide that the matter is too serious to be dealt with by the Invitation to Attend procedure, and may authorize the Secretary to proceed by way of sworn complaint.

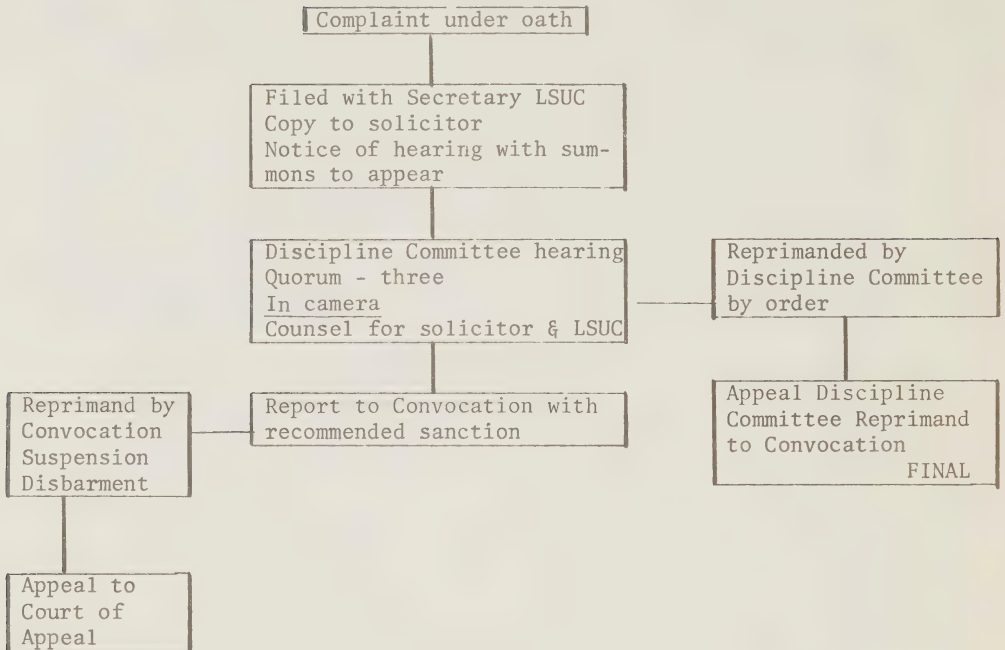
It should be noted that the lay Benchers appointed under s. 23(a) of The Law Society Act are members of the Discipline Committee and are entitled to participate in Invitation to Attend proceedings in the same way as may any other Bencher. There is no requirement that there be a lay member present: conversely there is no prohibition against participation by a majority of lay Benchers. Committee composition seems to be established largely on the basis of availability: lay Benchers appear to participate more actively per capita than do the elected (and other non-voting), Benchers.

The formal complaint procedure is illustrated graphically in simplified form in Figure III, and in greater detail in Figure IV.⁸¹

FIGURE III

LAW SOCIETY OF UPPER CANADA

FORMAL COMPLAINT PROCEDURE



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F L O W C H A R TFormal Complaint Procedure

Audit Report by one of the Law Society's Chartered Accountants if the matter deals with the handling of the books and records of trust accounts.

Complaint under oath prepared by the Secretary's office and filed in the Office of the Secretary. Outside counsel may be hired to represent the Law Society.

A copy of the complaint and the Notice of the hearing is served on the lawyer with a summons to appear (service is usually by registered mail).

Law Society may apply ex parte to a judge of the Supreme Court for an order freezing the lawyer's bank accounts (S.42) or for the appointment of a trustee (S.43). Where the lawyer is agreeable a co-signed arrangement with an approved Chartered Accountant may be reached.

Secretary's office prepares summonses to witnesses, arranges for the production of documents, etc.

3-4 weeks after service

Discipline Committee hearing

- quorum of three
- in camera usually
- evidence transcribed
- usually counsel for both Law Society of Upper Canada and the solicitor
- complainant usually testifies
- Assistant Secretary usually acts as Secretary to Discipline Committee

POSSIBLE FINDINGS BY DISCIPLINE COMMITTEE

Complaint not established	Discipline Committee finds professional misconduct or conduct unbecoming and orders a reprimand in Committee. Lawyer can appeal Order of Reprimand in Committee to Convocation. Convocation may refer the matter back to the Discipline Committee with such direct questions as it considers proper. FINAL.	Discipline Committee finds professional misconduct or conduct unbecoming and Discipline Committee reports to Convocation. Secretary's office prepares the Report with recommended sanction. Report is served on the lawyer with notice and summons to attend before Convocation. Lawyer may dispute any finding of fact by the Discipline Committee by filing a written statement with the Secretary. <u>Convocation</u> -not a re-hearing of the evidence -counsel for the solicitor and counsel for the Law Society can make submissions as to findings of fact, conclusions of law and penalty. Convocation may order
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POSSIBLE DISPOSITIONS IN CONVOCACTION

Discipline Committee's Report rejected,	Reprimand in Convocation	Suspension	Disbarment	Such other disposition as [Convocation] considers proper in the circumstances.
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Appeal to the Divisional Court (S.O. 1971 V.2)
The Judicature Act, (as amended) C57 S17 (1) (2)

The formal complaint procedure refers to the process initiated when the Chairman or Vice-Chairman of the Discipline Committee authorizes the Secretary to prepare and serve a sworn complaint on the lawyer whose conduct is being questioned. This procedure is reserved for more serious breaches of discipline. Serious criminal charges and misappropriation cases are always dealt with in this manner. At the early stages, of this procedure, and if the matter appears to involve the lawyer's handling of trust account funds, the Chairman or Vice-Chairman of the Discipline Committee will authorize an audit of the solicitor's books and accounts pursuant to Regulation 22 (under The Law Society Act). Occasionally such problems first come to the attention of the Law Society when one of the staff auditors is conducting an unannounced "blitz" audit.

Once the complaint has been authorized, the Secretary's office is responsible for preparing it. If outside counsel is to represent the Law Society at the disciplinary hearing, counsel will assist in its preparation. If the matter involves solicitors' accounts, the Law Society auditor who conducted the investigation will participate. The charge usually specifies that the solicitor has been guilty of professional misconduct or conduct unbecoming a barrister and solicitor, but sometimes both charges are included in one complaint.

The complaint and notice of the hearing are served on the solicitor either personally or by registered mail. Private investigators are rarely used by the Law Society to obtain evidence for disciplinary hearings. However occasionally they are hired to attempt to trace the whereabouts of lawyers who cannot be found easily so that they may be served with the complaint and notice. The lawyer accused is usually

advised to retain counsel.

If it is alleged that the lawyer failed to abide by the Regulations with respect to the keeping of books and records, clients' trust funds must be protected pending the outcome of the discipline hearing. The usual practice is for the lawyer to agree to a co-signing arrangement on trust account checks with an accountant approved by the Law Society. The Society notes that such a co-signing arrangement works well for money already in the lawyer's accounts, but is ineffective to stop lawyers from improperly appropriating later receipts. Occasionally the lawyer undertakes not to accept money from clients on any trust basis pending the outcome of disciplinary proceedings. If the lawyer is unwilling to cooperate or cannot be found, the Law Society may apply ex parte to a judge of the Supreme Court under section 42(1) of The Law Society Act for a stop order on the solicitor's bank account, or under section 43 for the appointment of a trustee for the purpose of preserving the property of the lawyer.

Discipline hearings are generally held twice a week each month of the year with the exception of one day each month when the "discipline policy section" meets. In 1976, the Discipline Committee met on the equivalent of 43 1/2 days, 5 of which were devoted to compensation fund matters. The hearings are normally held in camera, although the solicitor has the option to choose a public hearing. A transcript of the evidence is taken and the accused lawyer is normally represented by counsel. The Committee can proceed in the absence of the lawyer if satisfied that notice of the hearing was received and no explanation for the failure to appear has been provided. Adjournments of the hearings are frequently sought and granted. Counsel for solicitors seem to have

trouble obtaining instructions and adjournments to instruct new counsel are frequently granted. The delays in the process have become quite significant and have sometimes produced unfortunate consequences. On one occasion, in the seven-month period between the service of the formal complaint and completion of disbarment, the lawyer stole a further \$180,000 from clients. Apparently, the procedure could be completed much more quickly in the past, and it was not unusual for a solicitor to be disbarred within a few days of the discovery of a defalcation. This was possible because the lawyer frequently admitted guilt, would not engage counsel (despite the Secretary's advice), and would agree to shortened notice. The misconduct was "always proved by appropriate evidence", but the result was achieved more quickly and at a lower cost. The Secretary says that the tendency now is for lawyers to fight tenaciously, raising technicalities and requiring more thorough and costly investigation by the Law Society.⁸² The chief auditor for the Law Society estimates the average time between discovery of the misappropriation and imposition of penalty to be about six months. This is apparently much shorter than in many jurisdictions, but is not without its problems, as the case described above illustrates.

In most cases in which a serious breach of discipline has been committed, evidence of the lawyer's personal problems is led at the discipline hearing. These problems frequently involve marital difficulties, alcoholism, financial problems, depression, or difficulties entailed in the loss of a secretary or bookkeeper with whom the lawyer had entrusted many of the financial aspects of practice. While the evidence might indicate that the lawyer is incapable of practising law by reason

of, for instance, addiction to alcohol, the Law Society rarely proceeds under Section 35 of the Act which expressly provides for this situation. Section 35 is avoided because the Law Society feels that "it is much easier to prove a specific misappropriation or wrongdoing than it is to prove incapacity". It is usually the lawyer who introduces evidence of personal problems in an attempt to explain the unsatisfactory behaviour and to persuade the members of the Discipline Committee to soften the penalty being imposed or recommended. Character evidence from reputable members of the profession practising in the same locality as the accused lawyer also has a strong persuasive effect on the Committee. On the other hand, the lawyer's past record of discipline (to the extent that misconduct was established), is usually put into evidence. Now that the Law Society has access to information about previous civil liability history, it will be possible to introduce that evidence as well, if the Law Society sees fit.⁸³

Where the Discipline Committee finds professional misconduct or conduct unbecoming a barrister and solicitor to be established, it may reprimand the solicitor in Committee, or report to Convocation its findings and its recommendations in respect of the appropriate penalty. A reprimand in committee is used for less serious offences. No publicity whatsoever is given to matters which terminate in a reprimand in committee.

Where the matter is considered serious enough that the Discipline Committee believes it should be considered by Convocation, a report of the proceedings in a Discipline Committee is transmitted to Convocation. Convocation must approve both the finding of guilt and

the suggested penalty. Convocation is free to disregard the suggestion of the Discipline Committee about the appropriate penalty and to substitute any other penalty within its jurisdiction. That jurisdiction is found in S. 34 of the Act which allows Convocation: to cancel the lawyer's membership in the Society by disbarring the lawyer as a barrister and striking the lawyer's name off the roll of solicitors; to suspend the lawyer's rights and privileges as a member; or to reprimand the lawyer. Section 34 also permits Convocation to "by order make such other disposition as it considers proper in the circumstances". Convocation's power to choose from among a wide variety of sanctions is therefore not express (as it is for the governing bodies of most of the other professional organizations under study by the P.O.C. and as it is for the governing bodies of the legal profession in several other provinces).⁸⁴ Nevertheless, the Law Society states that "it is considered that the generality of [Section 34] would include the orders that are spelled out in the legislation of some other provinces".⁸⁵ Convocation has demonstrated some flexibility in the sanctions imposed on guilty members. Quite frequently restrictions are placed on the lawyer's practice when a reprimand in Convocation is ordered. An approved chartered accountant may be required to co-sign all cheques drawn on clients' trust accounts and a lawyer may be required to file quarterly audited financial statements. In some cases, lawyers have been required to undertake before Convocation not to engage in the private practice of law without first notifying the Law Society.

The profession is notified about all cases in which discipline is imposed in Convocation. A note of the lawyer's name and a brief description of the circumstances are placed in the Communiqué,

which is a one page memorandum to the profession describing proceedings in Convocation. The penalty imposed is also indicated. The Communiqué is distributed to the profession promptly after each Convocation. There is a further note of the matter in the more thorough Minutes of Convocation which are distributed some significant period of time after each Convocation. Additionally, in cases of disbarments and suspensions, press releases are sent to Canadian Press and to the three Toronto newspapers. All Canadian law societies, the Registrar of the Supreme Court, the Attorney General, local registrars, County Court Judges, Provincial Court Judges and Jail Superintendents from the County where the lawyer practised and adjoining counties are notified as are Legal Aid and Canadian Bar Association officials.

A disbarred lawyer is effectively cut off from traditional legal practise. The lawyer cannot work for another lawyer, nor share office space with another lawyer. A disbarred lawyer may apply to Convocation for re-admission into the Society. Although there is no minimum waiting period before a former lawyer can apply, re-admissions are not common. The lawyer's employment record since disbarment is the most important factor in a re-admission inquiry. Questions asked are: Has the former lawyer been gainfully employed in a responsible position? If alcoholism was a factor in disbarment, has rehabilitation been effected and for how long? Have all former clients in the compensation fund been repaid for money lost through improper behaviour at the time of disbarment? Does the local Bar Association support the application for re-admission?

The Law Society's lay Benchers participate fully in formal complaint proceedings both at the Discipline Committee and Convocation levels. There is no obligation on the Law Society to report in detail upon the operation of its discipline system and it does not do so. The only publicly available information consists of the current synopses (in the Minutes of Convocation and in the Communiqués), of the dispositions of formal discipline matters (where the accused lawyer has been found guilty and punished), and of a 1970 study of disciplinary system (insofar as it resulted in disbarment.)⁸⁶ Access to further information was gained when the Law Society permitted Mrs. Heather Werry of the staff of the Professional Organizations Committee, to spend two months (November and December, 1977) observing the system in operation and gathering information from Law Society records and current discipline files. A detailed summary of written complaints received by the Law Society over the one-month period November 9, 1977 to December 9, 1977, was compiled from examination of complaint letters as they arrived (Table I).^{*} The Law Society permitted the reproduction of a document entitled Comparative Statement of Final Count of Discipline Complaints Broken Down into Various Categories (1977) (Table II). This document is prepared by the Law Society as follows: when a complaint file is closed, an attempt is made to categorize the subject matter into one or more of the Statement categories. These subject categories are placed on index cards filed by name of the lawyer involved, and are counted as the files are replaced in storage. As many complaints are categorized into more than one subject-heading, the statement complaint totals are approximately double the actual number of complaints received.

* All Tables referred to in this working paper are reproduced in Appendix A.

To gain a clearer understanding of how complaints are classified and handled, approximately a 10% sample was drawn from those Statement categories which appeared related to competence, and specific information was gathered from the files of the complaints involved. A total of 165 files indexed for the period January 1, 1976 to November 7, 1977 were examined. The categories considered were:

- (A) No basis for complaint;
- (B) Solicitors fees;
- (C) Delay with justification;
- (D) Delay without justification;
- (E) Law - any other question of law (other than solicitors' negligence);
- (F) Misrepresentation;
- (G) Complaints from lawyers against other lawyers;
- (H) Law-Solicitors' negligence;
- (I) Communication; and
- (J) Referred to Benchers.

The results are presented in Table III, Charts A through J. The results of examining index cards in an attempt to draw the 10% sample indicated that the Statement category totals of the Law Society must be in error. As some discrepancies seemed large, Mrs. Werry and the Law Society employee in charge of the indexing and Statement preparation, recounted all 1976 categories. Reconciliation was impossible, and the recount figures therefore appear separately on Table II. As many of the cases involved complaints not pursued or established or complaints where the final resolution was one not to be published (Invitation to Attend, Reprimand in Committee), names of lawyers involved were omitted and the data is presented by case numbers only.

Information about the workload and output of the Invitations to Attend and of the Formal Discipline procedure for 1976 and 1977 was also gathered. From the index cards, **Mrs.** Werry was able to identify lawyers subjected to invitations and formal complaints. Examination of the lawyer's file and of discipline committee minute books produced the more specific information contained in Tables IV and V. The informality of the Invitation to Attend procedure; the fact that the matters involved frequently involve lawyers unaware of some specific Professional Conduct Handbook Ruling (and particularly Ruling 14, which imposes strict conditions on borrowing from clients); and the fact that the usual disposition of an Invitation is the calling of the lawyer's attention to a ruling or problem overlooked, or the rendering of extremely informal advice, mean that information about the disposition of Invitation proceedings was frequently not recorded in the Committee minute book or in the file of the lawyer involved, and was therefore not available to Mrs. Werry.

(a) TABLE I - ANALYSIS

In compiling Table I, Mrs. . Werry read complaint letters received by the Law Society. The categorizations of area of practice and of the nature of the complaint are hers. Demographics about the complainant were implied from the letters. Demographics about the accused lawyer were apparent in the letters or were obtained by attempting to discover firm size from various legal directories. The classification of the "Nature of the Complaint" at the end of Table I was prepared by the researcher. Obviously other analysts might well classify matters differently: in particular, "morally improper behaviour" has been used to comprehend all cases in which the accused lawyer is (apparently) consciously refusing to act as desired (refusing to honour an alleged undertaking, withdrawing from a case, breaching an escrow agreement). Adopting a wide definition of competence, it is suggested that at least 71 of the 171 complaints in the sample can be classified as impugning the competence of the accused lawyer. These 171 complaints comprise about 9-10% of the total complaints received in 1977.

Of the 171 complaints, 23 (13%) were from lawyers. Virtually all of these were unrelated to competence, raising questions of failing to honour undertakings, moral fault (conflict of interests, threats, changing affidavits), breach of trust, refusal to pay clients money owing, advertising and improper accounting. Only three complaints which related to poor performance, delay and improper withdrawal from

a case, can be considered to be definitely related to competence even in the widest sense: a fourth case, which involved the treatment of a search of title as a disbursement in a real estate fee, might plausibly be included among competence complaints by lawyers.

Only five complaints (about 3%) were from business clients. The vast majority of complaints came from individual clients who felt they had been serviced poorly or slowly, or overcharged. Virtually all of the competence complaints came from this source. About one-half of the complaints came from outside Toronto.

Sole practitioners and partners in small practices are heavily overrepresented as targets of complaints. Toronto practitioners, who form about half of Ontario's legal profession are similarly overrepresented. No data are available about other demographic features of complainants or lawyers complained against, nor is anything known about how complainants became aware of the Law Society complaints mechanism or why they chose to complain.

The high percentage of complaints arising out of real estate matters parallels the high civil liability profile of real estate: however the very sizeable proportion of complaints related to litigation is unique to complaints and is not mirrored in civil liability.⁸⁷

(b) TABLE II - ANALYSIS

The allocation by the Law Society of closed complaint files into the Table II categories was done very quickly and probably inconsistently, as little is regarded as depending upon it. However, the rough indexing and counting confirms the representativeness of Table I as a guide to the nature of complaints received, at least insofar as areas of law complained

about is concerned. In 1977, approximately 36% of complaint files closed concerned real estate, 25% litigation, 12% family law and 11% estates: this breakdown approximates in order of importance the summary of complaints by area at the end of Table I. The significant percentage figure variations may be true differences or may be the result of classification by different individuals.

A very substantial number of the complaints can be seen to raise questions of competence in the wide sense, and many of them might raise issues of incompetence even under the more narrow definition. Complaints classified into categories of Referred to Benchers, Communications, Fees, Delays, Solicitors' Negligence, Other questions of law, Complaints by lawyers, and Complaints without Basis, could all conceivably comprehend narrow or wide definition competence problems. The matter is explored more fully in the analysis of Table III.

The introduction of the seven new categories (areas of law), in 1976, suggests the possible awareness of the Law Society of the educational and quality control functions which the receipt and analysis of complaints can perform. The large increment in numbers of indexed complaints between 1975 and 1976 is largely due to the introduction of the new categories.

Table II is an internal document prepared by the Law Society. A terse summary of the number of complaints received in 1976 by area of law involved is presented in the Discipline Committee's Annual Report. It is anticipated that a similar summary of 1977 activity will be included in the 1977 Report. These Reports are published in The Law Society's "Minutes of Convocation", a report on the activities of the Benchers and committees which is available to those lawyers who ask to receive it.⁸⁸

(c) TABLE III - ANALYSIS

Mrs. Werry examined 165 closed files indexed under headings that suggested possible issues of incompetence. An attempt was made to get about a 10% random sample for each heading. However, as some files raised several indexed headings, the 10% figure is greatly exceeded for some categories. Examination of 165 files can produce a 10% sample even though 6150 matters are indexed for 1976 and 1977 because most files contain at least two headings (area of law and cause of complaint), and many contain several headings.

Mrs. Werry submitted the following composite data deduced from examination of the 165 files:

<u>Number of Complaints</u>	165	
<u>Location of Complainants</u>	Toronto	77
	Other	86
<u>Location of Accused Lawyer</u>	Toronto	90
	Other	75
<u>Firm Size of Accused Lawyer's Firm</u>	(i) <u>By number of lawyers</u>	
	1-3 lawyers	119
	More than 3 lawyers	38
	(ii) <u>By Type of Practice</u>	
	Sole Practitioner	69
	Partnership	78
	Other	16
<u>Date of Call to the Bar of Accused Lawyer</u>	1970-76	45
	1960-69	58
	1950-59	46
	- 1949	16

The researcher noted that in 38 cases, an amicable settlement appeared to have been reached between the complainant and the lawyer complained about.

An overview of these figures again illustrates overrepresentation of the sole practitioner and small firm partner. The most likely candidate for a complaint is a busy sole practitioner who has been complained about on several occasions in the past, has largely individuals as clients, and whose practice is centred in the real estate, litigation or estate fields.⁸⁹ Very recently called lawyers are rarely complained about: otherwise the frequency of complaints does not seem to heighten at any experience level. The most significant factor in predicting the likelihood of a complaint against a particular lawyer is the lawyer's past complaint history.⁹⁰

It is noted that the lawyers who have had bad complaints records appear to have difficulty communicating properly with clients: misunderstandings are frequent. Complainants appear to be unsophisticated individual clients similar to those observed in the one-month current complaints sample investigated for Table I. It is also noted that many lawyers have long careers in practice with few complaints while others engaged in similar areas of practice are the objects of a great number.

Lawyers who complained about other lawyers "frequently commented they were most reluctant to report another solicitor to the Law Society and said they usually did so, as a last resort, to get a lawyer to honour an undertaking when all [other] attempts had failed."⁹¹

Mrs. Werry's analysis of Table III concludes as follows:

"Lawyers in their replies frequently comment that the complainant was happy until he received his bill or that the complainant has yet to pay him anything. It is impossible to tell whether a complaint was registered just as a delay tactic by the complainant to stall the payment of his solicitor's account.

Lastly I should mention that most complaints are dismissed by the Law Society without being resolved to the satisfaction of the complainants ..."⁹²

The following additional comments can be made on the individual charts:

1. Chart A: No basis for complaint.

Ex hypothesi, all of these matters have been considered by the Law Society to involve no professional misconduct or conduct unbecoming a barrister and solicitor. It is impossible and would be improper to comment on the merits of such decisions on the basis of the limited information available to me. It should be noted that these judgments are all made by the Law Society on the basis of the complaint letter and the lawyer's response to it, without any further investigation of the matter complained about or the competence of the lawyer generally, as indicated by other matters in the lawyer's practice. Some complaints in this category are rejected by the Law Society as beyond its jurisdiction, on the basis that they involve "fees" or the dispensation of legal advice. Even though all matters in this category are regarded as groundless, there is evidence that Law Society involvement induces dispute resolute action in some cases.

2. Chart B: Fees

The Law Society declines jurisdiction in all fees complaints and recommends taxation. No matter in this category induced further disciplinary proceedings in respect of excessive, misleading, or unnecessarily incurred fees. However, where an element beyond merely excessive charging appears, the Law Society appeared prepared to consider the complaint (e.g. cases 7 and 20): in these particular instances, no misconduct was judged to exist. Several of the fees complaints suggest a quality component to the client's dissatisfaction. The inference that some of these fees complaints include dissatisfaction with quality of service is strengthened by the fact that the Law Society was prepared to investigate some of them (when it does not investigate "purely fees disputes").

The existence of a quality component to some of these complaints indicates the significance of the filtering out of fees complaints at lower levels before it can be known whether or not a quality component is involved.

No case in this group proceeded to further disciplinary action. Some dispute resolution functions were performed by Law Society intervention.

3. Chart C: Delay with justification

Again, matters in this group have been considered by the Law Society not to raise issues of misconduct, and no judgment is possible on the merits of such decisions. Substantial dispute resolution functions can be observed here, with Law Society intervention (in the form of asking for comments on the complaint), frequently producing dispute settling action. One matter (case 14) went beyond a lawyer's exchange of letters with the Law Society when an Invitation to Attend was issued after extensive delay. It appears that this should have been a "delay without justification" matter.

4. Chart D: Delay without justification.

In all these cases, the lawyer has been judged (ex hypothesi) to have delayed unnecessarily. In one case (number 9), the Law Society viewed this as a gross departure from the standard of practice expected of professionals and the matter went to formal discipline. The lawyer who had an ominous prior complaints record was reprimanded in Convocation (with costs) for this dereliction. The Discipline Committee and Convocation were each able to apply a very general standard to find an unacceptably low level of performance in the particular case. The lawyer involved appears to have completely neglected to act on the matter to which the complaint related.

In two other cases, the delay and failure to explain matters properly resulted in Invitations to Attend. In three cases formal complaint proceedings were initiated for failure to respond to Law Society letters. The dispute resolute effect of Law Society intervention was clear in many cases. The Law Society engaged in no further disciplinary action against more than half (8 of 14) of those found to have delayed without excuse.

5. Chart E: Questions of Law, other than Solicitor's Negligence.

This category was examined even though it was assumed that no lawyer's competence questions would be raised. In fact, several of the complaints raise questions of the calibre of the lawyer's knowledge or performance. All were found not to be established and as indicated above, no comment is possible except upon the lack of investigation beyond exchanging letters with the lawyer accused before dismissing the matter. Again, dispute resolution functions are apparent from Law Society intervention.

6. Chart F: Misrepresentation

One of the two complaints alleged an element of incompetent performance. On evidence presented with the lawyer's reply to the Law Society, the Society declined to investigate further.

7. Chart G: Complaints by lawyers against other lawyers.

The majority of these complaints involve misunderstandings between lawyers about the terms of agreements between them, or about failure to honour undertakings. One (case 8) involves a matter not connected with the lawyer's practice. Two cases (cases 5 and 6) involve possible competence questions.

8. Chart H: Solicitors' negligence.

In several of these cases, the Law Society concluded there had been no negligence and no comment is possible about such judgments except that raised above concerning the extent of the investigation carried out. In one case (number 6), the Law Society interviewed the complainant before concluding that no misconduct had been made to appear.

In 4 of the 11 complaints examined (case numbers 2, 5, 8 and 11), the Law Society declined jurisdiction on the ground that negligence was beyond its jurisdiction. In two cases, the Law Society inclined to the view that no negligence appeared. In the others, no conclusion was reached. Each of these cases (2 and 8) appears capable of raising professional misconduct issues even under the Law Society's operational definition. It is noteworthy that one client (case number 8) was told that discipline would "not help" the client, and he was told to sue instead. This client reported difficulty in finding a local lawyer willing to sue the accused lawyer. No complaint related to a lawyer's negligence proceeded farther into the disciplinary process than an exchange of letters (and client interview).

9. Chart I: Communication

These complaints arise largely out of situations where the client is surprised by the course of events or the lawyer's fees. Occasionally they occur because the lawyer has not explained the legal position to the client fully. Frequently a dispute resolution role is played

by the Law Society's intervention in such cases. In a number of cases, the matter seems to suggest that the lawyer was negligent in estimating fees poorly, in handling a case (apparently) ineffectively or in performing in a dilatory fashion. In some of these situations the Law Society's review of the correspondence indicates no misconduct by the lawyer. In no case was a "poor communications" matter pressed further in discipline.

10. Chart J: Referred to Benchers

Complaints are referred to Benchers when they raise issues regarded as too difficult for a Secretary to resolve unassisted, or when the complainant persists despite the Secretary's repudiation of jurisdiction. The files examined revealed an Invitation to Attend issued in respect of inordinate delay and poor communications (case 1), and the Law Society's refusal of jurisdiction even when a lawyer's bill was reduced by one-half in taxation (case 3). Case number 2 does not involve an allegation of incompetence, but illustrates the constraint imposed on the disciplinary process by inability to investigate beyond the letters exchanged among the Law Society, complainant and lawyer accused.

(d) TABLE IV - INVITATIONS TO ATTEND - ANALYSIS

The subject matter of Invitations to Attend is tabulated in Table VI.

Cases in the categories marked by asterisks could conceivably raise competence issues (in the wide sense): some clearly do. By this broad test, 19 cases (some 34%) of the 1976, 9 cases (some 14%) of the 1977 and 28 cases (some 23%) of 1976 and 1977 combined workload of the Discipline Committee's Invitations to Attend procedure might have involved allegations of incompetent performance. The numbers and percentages would decline if a narrow definition of competence were adopted. For instance, the complaints categorized as problems of delay, failure to communicate, failure to appear in court, failure to follow instructions and negligence, could all involve problems of lack of ability or of overwork, poor supervision or control systems, poor ability to relate to clients or simple accidents.

Because of the sparsity of Discipline Committee records of Invitations, and Mrs. Werry's consequent inability to compile complete records of sources of complaints and of dispositions, detailed analysis of these matters is impossible. It is noteworthy that most complaints by lawyers (of complaints whose source is known), involved allegations of breaches of undertakings, ethical rules and advertising: two complaints could be characterized as related to competence. Of the three complaints known to have originated with Judges, two involved blatant derelictions of duty (failure to appear in court or to send a substitute counsel; the other involved the clearest allegation of incompetence (case number 3 of 1977) and the strongest effective sanction (though the sanction of terminating civil litigation practice was self-imposed). It should be recalled that the Committee only has authority "to advise" on Invitation to Attend proceedings.

The percentage of sole practitioners dealt with by Invitations to Attend (58% in 1977; 50% in 1976) is much larger than their representation in the membership population (22% in January 1978). Toronto lawyers accounted for about 50% of Invitations: this closely reflects their proportion of membership in the Ontario Bar. No age group, as measured by date of call to the Bar, appears particularly vulnerable.

The difference between inputs into the complaints mechanism and outputs of the Invitation to Attend procedure should be noted. Approximately 50% of public complaints received involve allegations of incompetence in the wide sense: approximately 33% of the complaints involve morally improper or unethical conduct. At the Invitations stage,

less than 25% of the committee workload during 1976 and 1977 relates to competence matters, while morally improper and unethical conduct accounts for about 80% of the complaints considered (70% - 1976; 88% - 1977). This is accounted for by the filtering effects of finding complaints unfounded or denying jurisdiction at early stages, and by the introduction of a set of inputs from accounting reports that lawyers must file annually and from unannounced blitz audits.⁹³

V. FORMAL COMPLAINTS: ANALYSIS

The subject matter of formal complaints is tabulated in Table VII. Table VII is not highly reliable, particularly for 1977 complaints. Many of the complaints involve several charges and it is difficult to know which, if any, was primary.

However, Tables V and VII do show that in 1976 there were initially no formal complaints related to competence. Case 8 on Table V could conceivably involve incompetence, as could case 15, though in the latter, it appears that the accused lawyer had completely abdicated from practice. In each of these cases, the sanction of a reprimand in the Discipline Committee was imposed. No publicity is given to reprimands in Committee: neither the name of the lawyer reprimanded nor the circumstances of the professional misconduct which was involved in these cases was reported anywhere. Neither the profession nor the public would be aware of any formal complaint related to competence in 1976.⁹⁴

In 1977, cases 5, 7, 8, 14, 18 and 23 on Table V could conceivably involve competence issues. At best, they involve competence in the wide sense as characterized by poor work flow control or inability or unwillingness to communicate adequately with clients. In all but one of

these cases (case 7), a reprimand in Committee was ordered or the complaint was not established. The profession or public could become aware only of case 7, in which disbarment was ordered and full publicity would follow. Case 7 involved a failure to respond to Law Society letters and to file annual reports, as well as a failure to follow a client's instructions.⁹⁵

The overwhelming concern of formal discipline is misconduct. Virtually all cases subjected to formal discipline involve breaches of criminal statutes, failures to meet professional ethical standards, or failure to maintain the financial records required by Law Society rules. The formal discipline process is not engaged to consider cases in which it is alleged that a lawyer lacked the skill or ability to perform at an appropriate level: it is only with difficulty that it can be said that the process considers any cases of incompetence in the wider sense. The subject matter of about 50% of public complaint letters is almost completely unrepresented in any form in the formal complaint procedure, the only procedure which permits the Law Society to impose disciplinary sanctions on lawyers.

Since the formal procedure has little contact with competence matters, there is no occasion for experimentation with sanctions designed to "rehabilitate" incompetent practitioners or to encourage performance at more suitable levels. In those cases in which some competence element appears, the sanction imposed is almost universally that of a reprimand. In all of the formal complaint cases, the range of sanctions actually imposed includes only reprimands in Committee,

reprimands in Convocation, and disbarment: each of these sanctions is expressly authorized by s. 34 of The Law Society Act.

Chart D gives details of the only case during 1976 or 1977 in which the Law Society invoked its powers under s. 35 of The Law Society Act to find a lawyer incapable of practice by reason of mental illness. The power of suspension expressly granted by s. 35 was invoked to prevent the lawyer from practising until the mental illness is overcome.

VI. DISCIPLINE IN THE LEGAL PROFESSION: GENERAL ANALYSIS

That competence problems (in both the wide and narrow senses), exist in the legal profession cannot be doubted. The extent to which incompetence is a significant feature of contemporary legal practice can be debated. However it has been manifested in three ways. First, the busy solo or small firm practitioner takes on more work than can be handled by that practitioner and without proper systems or supervision to ensure that work can be delegated or is performed properly by subordinates. The consequences are a significant number of client complaints alleging undue delay, failures to communicate, poor quality of representation, negligence or excessive fees for services rendered. The problems may result from a lack of skills or knowledge, but more likely are simple demonstrations of poor performance caused by inadequate organization.

Secondly, there has been a dramatic increase in the civil liability incurred by practising lawyers, which has necessitated a change in the manner in which professionals are insured and has produced an almost doubling of liability insurance premiums.⁹⁶ The negligent acts which give rise to the liability may be the consequences of lack

of skills or ability generally; of lack of skills or ability in a particular area of practice outside the practitioner's main field; or may result from the same overwork and poor organization that generates the client complaints.

Thirdly, influential members of the profession have recently criticized the quality standards demonstrated before them by legal practitioners. The Chief Justice of Canada, the Chief Justice of the High Court of Ontario and several other Judges have recently and publicly expressed dismay at the lack of ability or lack of preparation of lawyers appearing before them. The problem of delay in litigation was attributed in part to the incompetence of "dabblers in litigation" in the 1973 Report of the Ontario Law Reform Commission on the Administration of Ontario Courts.⁹⁷

Yet, despite these developments the discipline system of the Law Society of Upper Canada seems singularly ineffective in attacking incompetence. Problems of lack of skills or knowledge appear never to be raised within the formal complaint procedure, and instances of "poor performance" arise very rarely and only incidentally to misconduct prosecutions in respect of criminal or unethical activities. The skills or knowledge issue is virtually never raised in the Invitation to Attend procedure, while only a very few "poor performance" cases (which usually involve extravagant delays or complete failures to respond to client inquiries), are raised in such proceedings. Even then, there is no sanctioning power available to the Committee in Invitation to Attend proceedings, and the circumstances which gave rise to the Invitation are not publicized to the profession or to the public generally.⁹⁸

To be sure, the situation is not as serious as that which caused the American Bar Association Special Committee on Evaluation of Disciplinary Enforcement (1970) to report:

"... the existence of a scandalous situation that requires the immediate attention of the profession ... Disciplinary action is practically nonexistent in many jurisdictions ... many disciplinary agencies have little power to take effective steps against malefactors." 99

The truth appears to be that the Law Society, like the governing body or disciplinary authority over lawyers in many other jurisdictions, has traditionally been preoccupied with misconduct offences.¹⁰⁰ Only recently, and largely as a result of the professional concern generated by the dramatic increase in liability insurance premiums, has the Law Society begun to take a genuine interest in the role discipline can play in preventing costly incompetence. The past abdication from disciplinary involvement is illustrated by the statement of the Vice-Chairman of the Discipline Committee in 1976 indicating the new orientation which Convocation was adopting:

"Recently and largely as a result of what can only be called bad experiences with our Errors and Omissions Insurance Plan, Convocation has instructed the Discipline Committee to lay charges of professional misconduct where there appears to have been gross negligence, repeated negligence or gross incompetence. This branch of the Committee's activity is becoming better organized now and members may expect to be reading in the Communiqué of more instances where these faults have been checked by the full weight of the Society's disciplinary responsibility in the hope of maintaining the required professional standards and public confidence in our Profession." 101

Many of the incompetence problems that arise in the legal profession are amenable to partial solution through discipline. Demonstrated lack of skill or ability and poor work flow control can each be usefully

addressed by a disciplinary system prepared to do so and prepared to accept flexible sanctions to cope with the different problems that present themselves. The difficulty of setting standards, while real, can be overcome by the adoption of general standards initially, which can be developed as they are applied in individual cases. The Law Society has, in the past, developed and applied standards in such highly subjective areas as , how great a delay can be tolerated; and what degree of failure to communicate with clients is acceptable.¹⁰²

General methods by which a desirable change in Law Society orientation can be encouraged and ensured are discussed in Part H of this paper: they involve largely the greater public accountability of the discipline system. The only "orientation" matter noted here is the Law Society's unwillingness to have its governing legislation amended to make clear that incompetence is a ground for discipline and to provide expressly for a wide range of sanctions. Apart from solving potential jurisdictional difficulties, such an amendment would serve warning and symbolic functions: it would provide clear evidence of the Society's proposed new concern, alerting practitioners to the fact that incompetence really will be a ground for disciplinary action in future; it would help to break the inertia of the previous misconduct orientation and symbolize to the practitioners and members of Convocation the profession's dedication to competence as well as honesty and integrity. It would help mark a new departure in the "case law" direction of disciplinary action.

The remainder of this Part identifies and comments on other institutional constraints unique to Law Society discipline.

The Society's disciplinary mechanism does not become apprised of a significant number of instances of demonstrated or apprehended incompetence. The filtering out at very preliminary levels of complaints alleging "negligence" as being beyond Law Society jurisdiction means that many potential instances of incompetence are not investigated at all. The filtering out of fees matters into taxation, has a like effect once it is accepted that fees disputes frequently involve a quality component. The Law Society does not have a fees arbitration, conciliation, or evaluation service such as those operated by the governing bodies in Manitoba and in England¹⁰³. The ability to become involved in fees matters might permit the Society to learn of instances of incompetent performance and to transfer those matters into discipline. A less effective technique would be to monitor carefully the operation of the taxing masters. However time and cost constraints are substantial: many clients never know of the taxing master, or knowing, do not think it feasible to have their fees complaint adjudicated upon by him.¹⁰⁴

In the past, the discipline system obtained no inputs from the civil liability histories of practitioners. Practitioners could be involved in several successful claims without the discipline system's becoming apprised of the circumstances, even in cases of **gross** or repeated negligence. The situation was that claims between members and insurers were confidential and access to specific information in the possession of the adjuster or insurer was privileged. (The Law

Society had obtained a legal opinion to this effect.) Now that the Society itself is a partial insurer, it properly becomes aware of the extent of a member's negligent practice when civil liability ensues. Such information could be introduced into the discipline system to become an input for the control of incompetent members. The Law Society has taken some action to use claims history information. In the Fall of 1977 an Errors and Omissions Committee Recommendation to issue Invitations to Attend to insurance claims repeaters was ratified by Convocation. There is no specific statutory authority for the procedure, though perhaps it is authorized adequately by Regulation 22(4). No sanctions can be imposed at such Invitations and the intention is to adopt a 'helpful posture,' suggesting ways of improving practice. The Communiqué states that "flagrant cases will continue to be referred to the discipline committee",¹⁰⁵ although there seems to be no record in our data of insurance claims histories forming the source of a disciplinary input. The use to which the claims histories will be put remains to be seen.

The Law Society receives very few competence complaints from lawyers, judges and other officials. The opportunity for practitioners to become aware of other incompetent practitioners is greater in law, in which many proceedings are adversarial (or potentially so), than in many other professions in which practice is largely independent, and input from these sources could be most valuable.¹⁰⁶ Professional Conduct Committee Rulings permit reporting by professionals of professional misconduct, and require reporting where the misconduct involves

financial misconduct.¹⁰⁷ Some jurisdictions require the reporting of all perceived misconduct, including incompetence. For instance, the American Bar Association's Code of Professional Responsibility makes it a disciplinable offence to fail to act competently, and requires that lawyers possessing knowledge of instances of incompetent performance report such knowledge to the appropriate agency.¹⁰⁸ The Canadian Bar Association Code provisions are similar to those in the current Handbook except that the duty to perform competently is more express.¹⁰⁹ It remains to be seen what the final form of the requirement of competence and duty to report will be once reconciliation of the Code and Handbook is complete. The dramatic rise in liability insurance premiums can be expected to stimulate more complaints from practitioners. Perhaps a clear statement of Law Society interest in competence will stimulate Judges¹¹⁰ to report poor performance more frequently, rather than simply making general public criticisms or adopting ad hoc and piecemeal measures.

The Law Society has not attempted to stimulate these alternative sources (except as indicated above), relying on client complaints to bring to its attention instances of incompetence. The operation of many of the constraints identified in Part A above, on this source, is clearly visible in the Law Society discipline system. Overwhelmingly, complaints are from individual clients about sole or small firm practitioners. The survey of law firms in Ontario, conducted by the Professional Organizations Committee, indicates that it is the smaller firms that have the most significant share of the individual client market: incompetence in members of larger firms is unlikely to come to the Law Society's attention.¹¹¹ The Professional Organizations Committee's survey of business clients of legal services supports the

data in Table I above which suggest that dissatisfied business clients express their displeasure by means other than reporting the lawyer to the Law Society. Only 10.3% of the business sample would approach the Law Society with fees complaints and only 6.9% would complain there in respect of poor quality legal services.

The filtering effects on client complaints of writing requirements and of the summary declining of jurisdiction over negligence and fees matters has been discussed above. The prior "filters" of knowledge of and willingness to complain to the Law Society are also relevant. The Law Society does not advertise that it investigates complaints against lawyers and disputes the assumption that "a substantial number of clients suffer from the incompetence of their lawyers but are not aware of their position or what they can do about it." The non-business client survey undertaken for the P.O.C. by Ms. Nakatsu indicates that there is merit in the assumption. Of the 30% of clients not satisfied with the quality of service rendered by their lawyer, only 15.8% of clients complained to the Law Society. And of the general sample of non-business clients, only 28.8% of the sample mentioned the Law Society as an avenue for complaint in the event that they were dissatisfied with their lawyer's quality of service. As many as 36.9% of respondents can be regarded as not knowing where they could complain.¹¹² The features of the lawyers' performance regarded by the client survey sample as unsatisfactory seem very similar to the written complaints that actually reach the Law Society and suggest that the complaints that do arrive represent only a fraction of actual client dissatisfaction.¹¹³ This hypothesis is further supported by evidence contained in Reports of the Ontario Ombudsman. For instance, in his

first Report, the Ombudsman noted that he had "detected an unawareness on the part of the public as to the procedures they should follow in asserting their grievances against the operation of the courts, or against lawyers or judges", and that the Ombudsman's Office had therefore assumed a referral role.¹¹⁴ In the nine or ten months period covered by the Ombudsman's second Report (July 1976-March 1977), the Ombudsman received 171 complaints about lawyers. These complaints include both misconduct and incompetence matters. Occasionally, the Ombudsman is able to provide advice to complainants and sometimes assistance is provided to them (for instance, helping them to draft letters). However, normally the Ombudsman suggests that complainants contact the Law Society. One can only speculate about whether or not referred complainants proceed to file written complaints with the Law Society.¹¹⁵

The effect of the operation of these constraints and the Law Society's limited efforts to stimulate other sources is that the Law Society becomes aware of only a fraction of possible instances of incompetence and in respect of the alleged incompetence of only a fairly narrow cross-section of its professional membership. The problem is exacerbated by the Law Society's limited ability and willingness to investigate (beyond an exchange of letters), the circumstances which led to an individual complaint, or to investigate generally the competence of practitioners who are complained about, or complained about frequently. Limited investigation of individual complaints is unlikely to produce evidence of patterns of overwork, reckless practice, or inability, in practitioners who respond quickly and carefully to Law Society requests for comments on client complaints.

There is no doubt that the Law Society discipline system performs useful dispute resolution functions. The performance of such functions

may have some effect on competence in alerting the practitioner involved to dissatisfaction caused the client, thereby promoting greater caution in respect of such activities in future. Yet the effectiveness of the system in performing this function is constrained by the nature of the system's caseload and the Law Society's publicity policy. The Society has taken the position that no specific attempt should be made to define the sorts of incompetence that might amount to "professional misconduct" and that the latter concept should be allowed to develop and to guide the profession by case-by-case elaboration. A major precondition for such development is the publication of the results of individual cases so that members of the profession can be guided in future. However, the circumstances and results of Invitations to Attend and of reprimands in the Discipline Committee are not published at all, and only brief summaries of names, circumstances and sanctions imposed in formal matters before Convocation are released to the profession or the public.¹¹⁶ Full details of the facts, of the standards established, and of the reasons for finding the accused lawyer to have failed to meet the standards are not available.

The Law Society may be rethinking its publication policy. This is not clear from page 6 of its interim brief on Continuing Competence. However, there are suggestions elsewhere that the Society may be proposing to publish the results of disciplinary proceedings in greater detail. The release of fuller texts of formal discipline cases may be contemplated. It is not clear whether or not increased publicity of the workload of the discipline committee in informal complaint matters or reprimands in committee is planned.¹¹⁷ Even if it is felt that publication of the names of practitioners dealt with in these proceedings should be withheld, there can surely be no objection to anonymous publication of the circumstances either of individual cases, or of recurrent competence problems.¹¹⁸

Such reporting could serve educational and deterrent functions while permitting compilations and analyses which could produce better quality control.

As well, increased reporting could promote awareness of the discipline mechanism, and could help instil public confidence in the profession's ability and willingness to consider incompetence problems. This lack of confidence characterized several responses to the Professional Organizations Committee's survey of individual clients of legal services. It is summed up in the following comments of Rae Corelli, managing editor of Global Television Network, who, in commenting on the legal profession's failure to take advantage of opportunities to improve its image in the eyes of the public, noted that:

"Number two among the omissions or lost opportunities is the refusal of the governing bodies to come down hard on legal incompetence. The Law Society of Upper Canada has always made much, and justifiably, of the severity with which it punishes lawyers who steal. But this is an activity that has little meaning to the average citizen, who seldom has anything worth stealing and is thereby denied the retributive satisfaction of dunning the Compensation Fund. As a matter of fact, a lawyer who is disbarred for having fraudulently converted to his own use \$300,000 belonging to the Canadian Imperial Bank of Commerce is liable to attract more public support than admonition. Legal incompetence, on the other hand, is a problem of far greater significance and concern to the little and low income client. Rich clients fire incompetent lawyers and hire replacements, although it should be noted that rich clients, because they are rich, can usually avoid that problem by hiring clever and honest lawyers to begin with. But the middle or low income client cannot afford this luxury of abruptly changing horses in mid-stream; in the first place, he probably doesn't know that he has an incompetent lawyer until it is too late, and in the second place, if he does discover his misfortune he usually can't afford the expense of re-commencing his action with a second lawyer.

One of the reasons frequently given by both the governing bodies and the Canadian Bar Association for the failure to act on incompetence is that competence is a difficult quality to measure. Who, they ask, will determine competence? Well, the answer would not seem to be too difficult: competence

can surely be determined by those who are themselves competent. And who is competent? I don't think it should be too difficult to assemble a five or six member panel whose qualifications in the view of the Bar at large were beyond question. It is interesting to note that most of the effective policing thus far undertaken by the legal profession - in areas such as fraudulent conversion and errors and omissions - has been in response to pressures from the most powerful and wealthiest clients.¹¹⁹

Increased public awareness and confidence could help encourage greater public reporting of perceived competence thereby incrementally increasing the effectiveness of discipline.

PART E - DISCIPLINE IN THE ACCOUNTING PROFESSION

I. INTRODUCTION

Analysis of discipline in the accounting profession is complicated by two major factors: at least two disciplinary systems have jurisdiction over most accountants in public practice;¹²⁰ and a great many accountants are either not licensed as or are not engaged in the practice of "public accounting". The focus of this section is almost exclusively on the discipline of accountants in public practice. It is only here that there is force in the assertion of a need for regulation and control of competence. Market forces are strongly operational in promoting competence in other cases, and deleterious third-party consequences are not a significant concern there.

Moreover, so far as competence is concerned, the exclusive focus of all accounting disciplinary mechanisms is upon the public practitioner. This fact has the effect of narrowing still further the scope of discussion in this Part. Current requirements for entry into the practice of public accounting entail that the vast majority of accountants in public practice are members of the Institute of Chartered Accountants of Ontario (I.C.A.O.). The study of discipline and public accounting is therefore largely a study of I.C.A.O. and the Public Accountants Council for the Province of Ontario (P.A.C.) disciplinary mechanisms. While some members of the Certified General Accountants Association of Ontario (C.G.A.A.O.) are in public practice, their limited numbers mean that the C.G.A.A.O. is necessarily less involved in disciplining public accountants, and the Society of Management Accountants of Ontario (S.M.A.O.) even less so. Changes in entry barriers might produce changes in institutional design and operation. Similarly, the limited involvement and numbers of members of the Institute of Accredited Public Accountants (I.A.P.A.), members in public practice dictates an exceedingly minor role for that association's

disciplinary apparatus.

II. DISCIPLINE BY THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

(a) SOURCES OF INFORMATION

The information presented in this section was gleaned from the following sources: Appendix A to the Research Directorate's Staff Study, "History and Organization of the Accounting Profession";* the bibliographic material contained in the bibliography at the end of this paper; letters from the Executive Director and the Director-Ethics of the I.C.A.O.; data compiled for the P.O.C. by the Institute's Director-Ethics; and interviews by Steven Wilson of the staff of the P.O.C. and myself with the Director-Ethics and other executive and Council members of the I.C.A.O. Some further information on the operation of the I.C.A.O. discipline system can be inferred from the P.A.C. data presented in section (b), below. As no member of our team personally inspected files or records of past disciplinary proceedings, and as the team did not have a member "in residence" at the I.C.A.O. as it did at the Law Society, the data and opinions presented in this section are necessarily less detailed and more qualified, than they were in Part B, above.

(b) OUTLINE OF DISCIPLINE SYSTEM

The framework for the disciplinary system of the I.C.A.O. is established by four instruments which are conveniently contained in the I.C.A.O. Members' Handbook. These are:

- (i) The Chartered Accountants Act which incorporates the Institute and provides jurisdiction for the passage of by-laws by the council of the Institute;
- (ii) By-laws of the Institute passed under the authority of Section 8 of The Chartered Accountants Act. These by-laws establish the various committees involved in discipline in the I.C.A.O., outline their jurisdiction and duties, and describe the

* Referred to below as "History and Organization of the Accounting Profession",

procedure which must be followed in disciplinary matters;

- (iii) The rules of professional conduct of the I.C.A.O., established by the first by-law of 1973. The rules constitute a code of professional conduct and define specific disciplinable offences; and
- (iv) Council interpretations of the rules of professional conduct, authorized by by-law 3 of the Institute. These interpretations are intended to inform and guide members about the application of the rules of professional conduct.

Relevant portions of each of these instruments are contained in Appendix II to this report.

The bodies involved in discipline in the I.C.A.O. include The Professional Conduct Committee, the Discipline Committee, the Appeal Committee, Council, and a number of Institute staff operating in the Ethics area. This staff includes a Director-Ethics and Assistant Director-Ethics (both C.A.'s), an Administrative Assistant and a stenographer, together with part-time C.A. assistants in the function of acting as secretary to the Discipline Committee. It is difficult to estimate the expense to the Institute of operating its discipline system. The Director-Ethics of the Institute estimated that the cost is substantially above \$100,000 yearly. The Institute provided a statement of revenue and expense for the year ended February 28, 1977, which indicated an expenditure for professional fees in respect of professional conduct proceedings of \$97,674 (\$87,724 for 1976). These figures do not comprehend many of the operating costs of the disciplinary mechanism. They do not take into account any part of \$70,000 and \$57,057 spent in 1977 on Council and committee meetings (\$51,809 in 1976), nor any of the \$717,250 disbursed in 1977 in respect of salaries

and benefits (\$610,733 in 1976), some of which were allocated to salaries and benefits of persons largely involved in disciplinary matters. These figures do not include any portion of overhead, heating etc., nor printing, stationery, postage, telephone and other sundry expenses. Under these circumstances, it is difficult to estimate the per capita expenditure on discipline for the approximately 12,000 Institute members of whom approximately half are in public practice.

(c) JURISDICTION OF DISCIPLINE SYSTEM

The jurisdiction of the discipline system over incompetence, however defined, is clear, though it must be assembled from a number of sources. Section 8(1) of the Act allows council to prescribe standards and tests of competency, to provide for the exercise of disciplinary authority generally, and to provide for rules of professional conduct. The by-laws of the Institute allow the Professional Conduct Committee to "receive in writing from any person a charge or complaint of professional misconduct by any member ... to receive in writing from any member a charge or complaint of unfitness, lack of moral character or professional or other misconduct of any member ... to make such preliminary investigation ... into any act, omission, matter or thing which may cause to or involve unfitness, lack of moral character or professional or other conduct in any member or which may constitute or involve violations to the by-laws, rules and regulations, ... or which may be or may have been derogatory to the reputation, dignity or honour of the Institute ... to take whatever action it deems proper in connection with any charge or complaint including referring any such charge to the Discipline Committee ...".¹²¹ The Rules of Professional Conduct include (in Section 200), standards of conduct affecting the public interest, and prescribe both that a member shall keep professional compe-

tence in good standing, and shall perform professional services with integrity and due care. The Council's interpretations of the Rules and particularly C.I. 206 - Professional Standards - express specific standards against which a member's performance is to be judged. Taking the provisions together, it seems clear that the Professional Conduct Committee, Discipline Committee and after them the Appeal Committee and Council have jurisdiction to discipline members who lack skills or ability, or who perform in a substandard manner for other reasons.

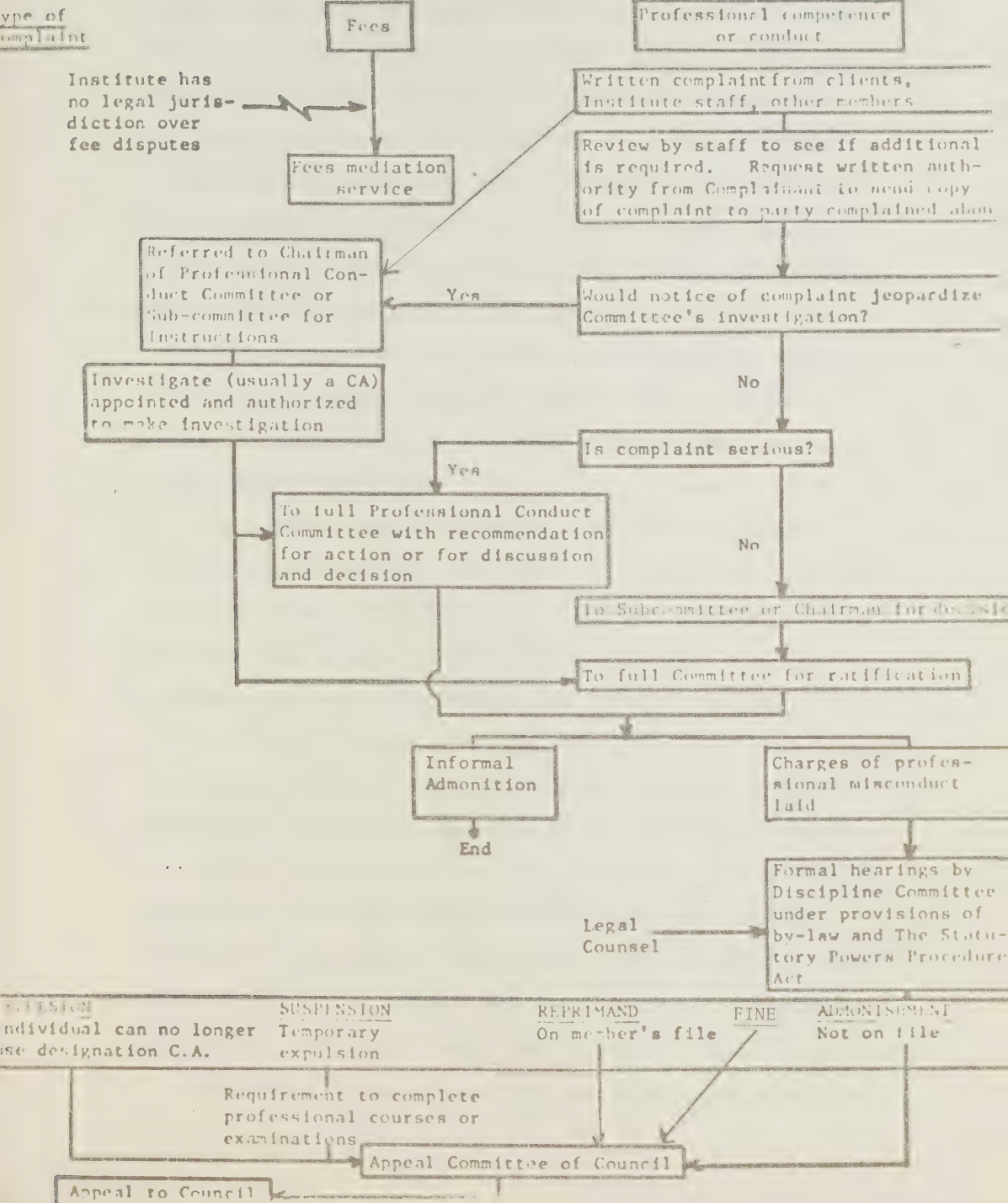
It should be noted however, that the Institute systematically declines disciplinary jurisdiction in respect of fees complaints. Complainants about such matters are notified of the fees mediation service operated by the Institute.¹²² The mediation service is reasonably new and has not yet been used in a dispute between an accountant and a client. It is not clear whether or not information disclosed during the course of mediation would be passed on to the Professional Conduct Committee for disciplinary action in the event that any incompetence appeared. The Institute will investigate and, if appropriate, take disciplinary jurisdiction over complaints involving allegations of negligence or other failures to perform up to professional standards.

(d) I.C.A.O. DISCIPLINE

The I.C.A.O. disciplinary procedure is illustrated graphically in Figure V.¹²³

I.C.A.O.

DISCIPLINARY PROCEDURE



Complaints against members may be made to the Institute by telephone calls or in writing. In the event that a telephone complaint is received, the matter is passed to either the Director-Ethics or the Assistant Director-Ethics. These persons attempt to get the complainant to reduce the complaint to writing. The requirement of writing is enshrined in the rules governing the activities of the Professional Conduct Committee, and is justified by the Institute on the basis that all complaints present a distinct probability of the facts being distorted. No record is kept of telephone complaints, and information presented below about the content of telephone complaints was given to us from the recollection of the Director-Ethics.

The general refusal to act on telephone complaints alone is qualified to some degree. In the event that the information referred to in the telephone call is available in some public record, the Institute will take action to attempt to obtain the record. For instance, the telephone caller may refer to newspaper reports, or more frequently to some court action in which a Chartered Accountant is implicated. The Institute itself has a newspaper clipping service, and in cases of alleged actions against accountants, asks the solicitor for the Professional Conduct Committee to locate the case if at all possible. The Professional Conduct Committee can then act on the written report of the lawyer, or a committee member can lay a complaint, thereafter taking no further part in the proceedings.

The Director-Ethics indicated that the Institute receives many more calls than letters. He finds that in many cases the would-be complainant is reluctant to give even the name of the person complained about. He also finds that in many cases, when a caller can be coaxed to give the name, the person implicated is not a C.A. or is not a

public accountant at all. The Institute staff will interview any person who wishes to complain about the actions of any member, and the Director-Ethics indicates that the staff makes vigilant efforts to "coax" the complainant into reducing the complaint into writing.

When a written complaint is received, it is first reviewed by Institute staff to see if additional information or documentation is required before the complaint is considered by the Professional Conduct Committee. It is normal practice to request written authority from the complainant to send a copy of the complaint to the accountant complained about so that any comment or explanation the accountant cares to make can be put before the Committee when it considers the matter. It is usual to identify the complainant to the accountant complained about.

The Institute staff cannot on their own close any file which has been initiated by a written complaint. Sometimes a complaint appears to be founded upon a misinterpretation of Institute Rules, and in such cases the file may be closed without reference to the person complained of on the instructions of the Professional Conduct Committee, a subcommittee of that Committee, or the Committee chairman. In all other cases, the substance of the complaint is transmitted to the person complained about with an invitation to provide such comments and explanations as may be desirable. Upon receipt of explanations, the file is transmitted to the chairman, to a subcommittee, or to a full committee of the Professional Conduct Committee to assess the merit of the complaint.

If a subcommittee considers the complaint to be a minor breach of a "domestic" rule, the member is informed of any shortcoming and the file is closed after the subcommittee's decision has been ratified by the full committee. Decisions of the chairman and his deputy are also ratified by the Committee, so that the full committee has the only final decision making power and responsibility.

Matters judged to be more substantial are referred to the full committee with a recommendation for further action. Further action recommended is usually one of the following courses:

1. That the Committee require the production of working papers; or
2. That the Committee appoint one of its members or a paid investigator to investigate the matter further normally by interviewing the member accused and inspecting the member's work in respect of a number of other matters; or
3. That the member be asked to attend a meeting of the Committee to discuss the complaint.

Express authority for these courses is found in by-law 79 of the Institute By-laws.

If the explanations given satisfy the Committee that the complaint is without merit, the file is closed subject to a proviso that it may be reopened if additional information comes to the attention of the Committee. In most cases, however, there is some element of validity in the complaint, although it may not be sufficiently serious to justify further action. In these cases, the views of the Committee are made known to the person complained of thus effectively acting as a warning. If the Committee feels that the complaint is not sufficiently serious for charges to be laid before the Discipline Committee (i.e. not

affecting the public interest), it may resolve to indicate its concern through an informal admonishment with a warning not to repeat the offence. When the Committee believes that the actions of the member are more serious and are matters affecting the public interest, it will resolve to lay charges for prosecution before the Discipline Committee. The Director-Ethics indicates that the Committee recognizes the "educational value" of its work, and has a policy of taking up all valid complaints, even minor ones, with the member involved. He also indicated that it is through the investigations by persons appointed under by-law 79 that "competence cases which are referred for charges to the Discipline Committee are normally caught". It should be noted, however, that the majority of "professional standards cases" originally come to the Institute's attention by being reported by other C.A.'s.

The Director-Ethics discussed the usual handling of "professional standards" cases. He indicated that complaints which will eventually be categorized under this heading are not usually specific, and that they do not necessarily entail harmful consequences (such as the non-detection of defalcations, the overstatement of assets or understatement of liabilities, the presentation of improper balance sheets or income statements). The financial statements subject to a complaint may in fact be correct and fully informative even though proper accounting standards have not been applied. Whether or not this is so does not lessen the Committee's concern in such matters since in the absence of proper accounting standards, a member cannot satisfy the duty to obtain the necessary information and to carry out the auditing standards of the profession. The Professional Conduct Committee might still investigate a breach of Professional Standard Rules in such circumstances.¹²⁴ The Director-Ethics also indicated that

exceptions or qualifications to an opinion, or inadequate disclosure, are likely to generate "professional standards" complaints. He said that it is usual practice to call for the production of members' working papers in such cases. These are examined and possibly discussed with the member involved, and if the complaint appears to have foundation, the Committee will "normally" authorize the appointment of a paid investigator. The investigator visits the practice and reviews a sample of other files of the member to see if the deficiencies in the one file are representative of the standards of practice of the member generally. The files are chosen randomly by the investigator. The Committee recognizes that any member may for some reason fail to perform adequately on one file. Depending on the seriousness of the matter, it may be enough that the member is informed of the shortcomings and warned. Where the investigation reveals a pattern of deficiencies "it is probable that the Committee will lay charges of professional misconduct".¹²⁵

The sanctions that have been employed by the professional conduct committee in the past include informal admonitions, referral of a charge to the Discipline Committee, or a decision to defer referring a charge to the Discipline Committee for six months and to inspect the accused member's practice at the end of six months to see if improvement is evident. In the latter case, if improvement is detected at the end of the six-month period, a decision may be made not to refer the charge to the discipline committee. While this latter sanction may have been prevalent in the past, the Director-Ethics indicates that it is no longer an expected course in professional standards matters. He says that in such cases admonitions cannot be expected either and that in these matters charges are usually

referred to the Discipline Committee, He says that the Professional Conduct Committee has received legal advice that it cannot order a member to be re-educated in any way, and in particular cannot order that the member complete some course on pain of being charged before the Discipline Committee should the member fail to complete the course satisfactorily.

Summaries of the facts of all cases in which the Professional Conduct Committee has decided to admonish a member are reported in the bi-monthly publication, Checkmark. There is no publicity at this stage of the name of any person admonished by the Committee. The Director-Ethics indicated that the Professional Conduct Committee met for 23 days, 276 "man-days" approximately, for the combined years 1975-76. He also indicated that these figures are days of full committee meetings and that in addition there have been ad hoc subcommittees struck to consider particular cases and to report. The Professional Conduct Committee also has four standing subcommittees which deal with various categories of complaints and their meetings are not included in these totals. Similarly, he indicates that the time spent by legal counsel and by Institute staff is not included.

It should also be noted that the Professional Conduct Committee retains a continuing interest in matters that go to the Discipline Committee, the Appeal Committee and to Council. The Professional Conduct Committee must be notified of the disposition of cases by the Discipline Committee and by the Appeal Committee, and the Professional Conduct Committee has jurisdiction to appeal against any finding or order made by the Discipline Committee or by the Appeal Committee. In at least one case, the Appeal Committee upheld an order of expulsion made by the Discipline Committee but varied the order in respect of

publication of the member's name. The Professional Conduct Committee appealed this variation to Council. Council restored the original order of the Professional Conduct Committee and required publication.¹²⁶

Where the Professional Conduct Committee refers charges to the Discipline Committee, a formal hearing under the provisions of the by-laws and The Statutory Powers Procedure Act is held. The sanctions available to the Committee at the end of a hearing and upon a finding that the member is guilty of a charge are set out in by-law 80(4), (reproduced in Appendix II). In particular, the Committee has power to admonish informally, to reprimand, to fine, to suspend on such conditions as the Committee may determine, or to expel any member from membership in the Institute.

Expulsion deprives the accountant of membership in the Institute and of the right to use the professional designation "Chartered Accountant" and designatory initials "C.A.". Suspension has the same effect as expulsion except that it is for a limited period of time and comes to an end after expiry of the period (and when any requirements imposed by the Committee have been met). The sanction most frequently imposed collaterally to a suspension is the requirement to complete professional courses or examinations. This is a means of bringing a member who has failed to comply with professional standards back to an acceptable level of performance. The subsequent performance of such a member may be monitored by the Professional Conduct Committee. A lesser sanction, such as reprimand, may be employed by the Discipline Committee. Reprimands become a matter of record in the member's file. An informal sanction is that of admonishment: it can

be administered by the Discipline Committee but does not become a matter of record. The purpose of sanction in the disciplinary process is stated by the Institute to be: the removal of members unfit to be professional accountants; the redemption if possible of those who have failed to maintain professional standards to a less serious degree; and the education of other members by disseminating suitable publicity of actions taken.¹²⁷ The Director-Ethics indicated that the Discipline Committee usually publishes a summary of each discipline matter and the name of the convicted member in Checkmark. He said that "occasionally" the Discipline Committee will recommend that the name of the member involved be suppressed.

The exact effect of the more severe sanctions which can be imposed by the Discipline Committee should be noted. Neither suspension nor expulsion has any legal effect on the ex-member's or suspended member's right to engage in public accounting. Whether or not suspension or expulsion means "economic death" the member is theoretically entitled to practise as a public accountant until sanctioned by the Public Accountants Council. Table VIII presents available statistics on the frequency with which a member has been disciplined severely by the I.C.A.O. but permitted to retain a public accountant's licence.

The Discipline Committee has power during or after a formal hearing to admonish informally members whether found guilty or not. The Committee must report forthwith to the Professional Conduct Committee and to Council the disposition of every charge referred to it. The Discipline Committee has power to assess the costs of any formal hearing against the member involved, and the Appeal Committee

and Council each have similar powers.

The Professional Conduct Committee or any member found guilty of any charge by the Discipline Committee may appeal the Discipline Committee's findings or orders as to penalty or publication to the Appeal Committee. The Appeal Committee has power to confirm, reject or change any findings or orders made by the Discipline Committee made under the by-laws, including those relating to publication.

A final appeal to Council is also permitted whenever the Appeal Committee confirms or makes an order suspending a member or expelling a member. Council has the power to confirm, reject or change the findings and orders of the Discipline Committee and of the Appeal Committee and to make any order which in its discretion and nature of the case or natural justice may require. The appeal may be by way of a review of any finding on which an order below was based, or may be a new formal hearing of the whole or any particular aspect of the charge. The right to appeal in either of these fashions is also available at the Appeal Committee stage.

Once disciplinary proceedings are completed, the Institute normally reports to the P.A.C. about the circumstances leading up to the proceedings, and frequently provides evidence to the P.A.C. The Director-Ethics indicated that the I.C.A.O. usually waits until this stage to report to the P.A.C., in furtherance of "natural justice". He also indicated that professional standards generally are the subject of greater vigilance by the Institute than they used to be. While previously a member was advised to use advisory services and to become active in professional development where standards were found to be low (and review some six months later might follow),

the Institute is now more prepared to use discipline as a means of promoting the competence of its members.

The Discipline Committee sat for 26 days (118 "man-days"), while the Appeal Committee sat for 4 days (18 "man-days"), during the two-year period, January 1975 through December 1976.

Data concerning the workload of the various organs of the I.C.A.O. disciplinary system was not provided to the "competence research team" on a case-by-case basis. Instead, aggregate information about complaints received by the Institute and about the disposition of cases by the Professional Conduct, Discipline, and Appeal Committees, and by Council was provided.

Table IX (Charts A, B, C, D and E), presents data about written complaints received by the Institute. As indicated, and except to the extent described above, no information is available concerning telephone complaints or allegations.

Table X provides data concerning the workload of the Professional Conduct Committee during 1975-76 (the latest period available to us). The report of the chairman of the Committee, from which this data has been extracted included the following comment on the data in Table X:

"The workload of the Professional Conduct Committee continued to increase during the current year -- no doubt, at least in part a reflection of the increase in complexity of the society in which members carry out their professional activities, combined with the increase in the number of members of the Institute. Eleven one-day meetings were held during the year (compared to ten during the previous year) at which the committees dealt with 190 separate matters (compared to approximately 150 in the previous year) some of which required consideration at more than one meeting.

...

A considerable part of the work of the committee fulfills a very valuable educational function for members. The interpretations and opinions given in response to requests from members assist them to gain an understanding of the requirements of the Rules and Council Interpretations. In addition, in many instances, a minor infraction is brought to a member's attention in order to make him aware of the nature of his error and to assist him to avoid a similar action in the future.¹²⁸

The report of the chairman of the Discipline Committee for 1976 included the following notes:

"The committee held a number of meetings -- in which it heard charges against seven members. The decision of the committee in one case has been appealed and not yet heard before the Appeal Committee. Therefore, no further detail of this case is given in this report. In the remaining six cases, the member either pleaded guilty or was found guilty of all or some of the charges; the penalties imposed, in each case, were considered appropriate when related to the gravity of the offences and the relative circumstances.

One member was expelled, having been found guilty of a number of charges including failure to maintain independence as auditor, receiving personal benefits in dealings with clients, without the clients' knowledge or consent, associating himself with false or misleading financial statements, expressing an opinion without obtaining sufficient information and failing to maintain requisite standards of competence. Publication of the decision of the committee, naming the member, was ordered.

Two members were found guilty of failing to maintain the required standards of competence and they were reprimanded, assessed costs of \$1,250 and \$1,500 respectively and required to take and pass the Institute's modular course and examination in auditing and to complete certain of the Institute's professional development courses. Publication of the decision of the committee, naming the members, was ordered. ...

[The other cases involved misconduct and advertising offences, unrelated to competence]

...

Three cases are pending including one carried over from the previous year. Unfortunately, it appears that little more can be done, than is done at present, to avoid extended delays and adjournments in cases being brought to hearing. The right of a member to a fair hearing clearly is of importance and some delays may continue to be encountered because of the difficulties of bringing all the affected parties together at one time." 129

The only information available about the activities of the Appeal Committee is contained in the 1976 report of the Committee chairman. The report is as follows:

"The committee met three times during the year, once to consider procedural matters related to an impending appeal, and on two occasions to hear appeals lodged by members against orders of the Discipline Committee. In the first case the committee upheld the order of expulsion made by the Discipline Committee, but varied the order in respect of the publication of the member's name. The Professional Conduct Committee subsequently appealed this variation to Council and Council restored the original order of the Discipline Committee. In the second case the member appealed against the penalties imposed by the Discipline Committee and applied for a new formal hearing. At the new hearing before the Appeal Committee the member pleaded guilty to the charges but made representations concerning the order made by the Discipline Committee. The Professional Conduct Committee acknowledged that there were exceptional mitigating circumstances in the case, a view which was concurred in by the Appeal Committee. In the circumstances the Appeal Committee varied the order from a three months suspension to a reprimand, but specified that its ruling could not be considered as setting a precedent."¹³⁰

We have no information about the disciplinary activities of Council during any part of the 1972-77 period except for a reference to its allowing an appeal by the Professional Conduct Committee from an order of the Appeal Committee.¹³¹ As appeals to Council are from decisions of the Appeal Committee and as the Appeal Committee sat during only 4 days (18 man days) during 1975-76, it is anticipated that Council's involvement will be found to be quite limited.

TABLE IX - ANALYSIS

There are no statistics available to indicate the total number of complaints received by telephone alone by the Institute. The earliest data available to us is in respect of complaints received in writing by Institute staff and in respect of written

complaints laid before the Professional Conduct Committee in consequence of staff investigation or investigation by a committee member as described above. This data is presented in Table IX.

Chart A of Table IX shows a substantial number of complaints (about 37 of an approximate total of 200 complaints and about 17.50% of the total complaint load of the Professional Conduct Committee), to involve alleged failures to meet "professional standards". Complaints classified under this heading relate to such matters as: deficiencies in auditing; failure to apply proper accounting principles; failure to obtain the minimum information required to carry out auditing standards; stipulating exceptions or qualifications to the opinion which are sufficiently material to nullify the value of the opinion; or generally, breaches of the standards set out in Rules 200 to 217 and in Council Interpretation (CI) 206. This category includes complaints relating to inadequacies of skill or knowledge, and to failures to apply the skill or knowledge diligently in particular cases.

Chart B of Table IX indicates that while complaints are made to the Institute by clients (50/200, or 25% of complaints received, approximately), a larger number of complaints is received from other members (72/200, or 36% of complaints received). A substantial number of complaints originate with Institute staff who discover alleged improprieties through newspaper reports, through monitoring of relevant journals, and through the occasional follow-up of telephone complaints (as indicated above).

However, as Chart C of Table IX indicates, complaints initiated by I.C.A.O. staff are largely concerned with ethical matters, while most client complaints involve ethical and business disputes. A not insignificant percentage of client complaints relates to professional standards; but far and away the greatest source of professional standards complaints is "other members of the Institute". The Director-Ethics indicated that the majority of complaints by members about breaches of professional standards by other members arise when a new accountant is reviewing work performed by a former accountant and notices some apparent deficiency.¹³² Members who become aware of such deficiencies are required by the Rules of Conduct to report breaches to the I.C.A.O. Rule 211 provides that:

"Subject to the provisions of Rule 210 [accountant to maintain confidentiality unless acting under lawful authority of Council, Professional Conduct Committee, Discipline Committee or Appeal Committee] a member shall bring to the attention of the professional conduct committee any apparent breach of these rules or any instance involving or appearing to involve doubt as to the competence, reputation or integrity of a member ..."

The Director-Ethics noted that members "do not like to report" such breaches, but that, nevertheless, they do so.

Chart D of Table IX indicates a dramatic overrepresentation of sole practitioners and members of small and medium-sized firms in the complaints files opened. Accounting for roughly 50% of members in public practice, this group accounts for about 72% of complaints. The Director-Ethics noted (and the figures in Table XI Chart A appear to confirm), that these size-groups are particularly overrepresented in professional standards complaints. He noted further that firm size appeared to be the only common denominator among demographics of C.A.s complained against.

It seems impossible to account for this overrepresentation of smaller firms on the basis that types of clients most likely to complain are concentrated among the smaller accounting firms. Charts E-1 and E-2 of Table IX indicate that individuals (who are predicted above to be more likely to complain),¹³³ are concentrated as clients of small and medium-sized firms. However, Chart E-3 of Table IX shows that "individuals" as a group, account for a very small proportion of fees earned by accountants: and Chart C of Table IX indicates that clients are not a major source of professional standards complaints. It appears either that pre-entry selection measures or that intra-firm educational and quality control programs of larger firms are more effective than measures taken in smaller firms, or that the likelihood of review by another accountant is greater in small firms than in large.

Chart A of Table X describes the workload of the Professional Conduct Committee. It is clear that much of the time of the 23 days (276 man-days minimum) spent in committee activities was taken up by matters other than discipline. The note referred to above¹³⁴ gives further details on the 43 "conduct and competence" matters referred to in Chart A of Table X. The note suggests that at least 4 of these cases involved questions of professional standards, since it is normally only in such cases that special investigators are chosen to investigate a member's practice. The extent to which incompetence was involved in the six matters in which charges were laid or the seven matters in which informal admonishments were administered cannot be determined from Table A and the accompanying note.

Chart B of Table IX indicates that of the approximately 35 professional standards cases brought to the attention of the Professional Conduct Committee in 1975 and 1976, charges were laid in about 9 (25%), of the cases. Fully 25% of the cases await disposition and charges can be expected to result in some of these matters. The Committee pointed out errors in about 5 cases (12.9%) and in about 5 other cases (12.9%) admonished the member involved, fulfilling the educational function referred to in the Professional Conduct Committee chairman's report. Notes of the circumstances leading to these admonishments would have been published in Checkmark if normal I.C.A.O. procedures were followed. Thus in about two-thirds of the professional standards cases disposed of by the Committee, some fault was found with the accused member's work, and advice, or reference for further disciplinary action followed. These figures suggest that the inputs into Professional Conduct Committee activities are rather selective and involve "mostly" cases where a member has performed deficiently. This inference is confirmed by the Director-Ethics who noted that, "in most cases ... there is some element of validity in the complaint although it may not be sufficiently serious to justify further action".¹³⁵ This is to be expected where the main source of competence complaints is "other members", and where client sophistication can be expected to be higher than in professions serving large individual client populations.

Activity of the Discipline Committee for the period January 1972 to December 1976 is illustrated in Chart A of Table XI. The data reveal that over half of the matters considered by the Committee (17 of 30), are concerned directly with failures to perform up to acceptable professional standards levels. Normally, in such cases, the Discipline Committee suspends the Institute membership of the accused accountant and imposes a mandatory professional development requirement as a condition of reinstatement, or reprimands and requires the member to satisfy a professional development requirement. Occasionally, a member will be expelled for failing to meet Institute standards.

There appear to be no common demographic features among those disciplined for standards deficiencies except for a striking overrepresentation of sole practitioners and accountants practising in small and medium-sized firms (at least 15 of the 17 cases), and an underrepresentation of very recently qualified members. It appears that the problem of failure to meet standards is that of the marginal professional, serving smaller clients and attempting to profit on lower fees by reducing the quality of service.

The five-year figures of Chart A of Table XI are confirmed by the two-year data in Chart B. About 50% of the Committee workload involves professional standards although an exceptional number of these cases originated with client complaints. The complaint originating with the Law Society was likely registered in pursuance of an agreement between the Law Society and the Institute to refer all cases of accounting failures found by the Law Society to the I.C.A.O.

A full range of sanctions was imposed on members in these cases. Detailed case-by-case information is available only from secondary sources. The 1976 report of the chairman of the Discipline Committee¹³⁶ describes some typical incompetence cases and indicates the imposition of penalties of expulsion, or suspension with re-education together with publication of the decision naming the member sanctioned. This pattern is confirmed by examination of the reports of individual cases before the P.A.C. (Table XII). Cases 5, 7, 8, 9 and 13 involved discipline by the P.A.C. of C.A.'s who had been suspended and ordered to be re-educated by the I.C.A.O. Case 18(a) describes a situation in which the Institute member had been expelled for failure to maintain Institute standards.

(e) DISCIPLINE BY THE I.C.A.O.: GENERAL ANALYSIS

The importance of the ability and willingness of the I.C.A.O. (and, in particular the Professional Conduct Committee), to appoint investigators to inspect generally the practice of members against whom competence complaints containing any apparent degree of credibility have been received, should not be underestimated. The Director-Ethics estimates that in about "two-thirds of the cases (21 in number)", before the Professional Conduct Committee in the years 1975 and 1976, and involving professional standards, investigators were appointed to examine a number of representative files of the accused member.¹³⁷ It is usually upon the evidence of these investigators that a conviction in respect of breach of standards is established before the Discipline Committee.

The Institute's discipline system has attempted to overcome several of the constraints on discipline as a means of controlling incompetence, and is likely to have a significant impact on the competence of members. The Institute has attempted to use discipline for this purpose for some time, though recently it has become more aggressive: charges are now laid by the Professional Conduct Committee in cases in which in the past, the member would have been warned and perhaps reinspected six months or a year later.

The Institute is actively interested in receiving and pursuing complaints of incompetence. It makes use of "negligence" complaints (despite recognizing that a member might perform poorly for one client and that discipline should not necessarily follow in such a case), by investigating the practice of the member generally when the C.A.'s competence is impugned in a single complaint. The Institute uses complaints as a "springboard" from which to conduct selected reviews of the practices of these members about whom some doubt has been expressed.

The I.C.A.O.'s performance is assisted in a number of ways. First, other members do complain. The utility of such complaints is clear from the high conviction rate of those reported by other members. Secondly, many accounting clients are fairly sophisticated and therefore (at least to some extent) are able to recognize apparently poor performance. Very few complaints are totally without merit, and investigation of complaints is not generally wasteful as it is more likely to be where dissatisfied and unsophisticated individual clients complain. The discipline system, insofar as it affects

competence, is manageable. As well, the I.C.A.O. burden appears to be lightened by the existence of accounting standards endorsed by the Canadian Institute of Chartered Accountants (C.I.C.A.), and by widespread agreement on generally accepted accounting principles. The evidence on this is inconclusive. In many cases, the member's performance has departed dramatically from that expected of a "reasonably competent accountant" and reference to more particular standards is unnecessary. In other cases, where there is a real dispute over what standard should be applied, the Discipline Committee (or other body, where the matter goes further), hears evidence about standards, and establishes the appropriate standard on the basis of that evidence. Such cases usually involve conflict between the standard suggested by the investigator appointed by the Professional Conduct Committee, and the accused member. It should be noted that all standards employed by the Institute admit of flexibility where the C.A. involved can justify a departure from normal practice. Application of the "normally expected practice" test appears practical, and has produced a significant number of convictions even in the face of contests over what can be "normally expected".

The institutional design of the discipline system of the I.C.A.O. is also conducive to effective handling of competence matters. Carriage of all aspects of such matters is given to the Professional Conduct Committee from the beginning. No file is closed without reference to a member of the Committee. The Committee is active in attempting to "educate" members involved in minor problems. It retains control over proceedings to the extent of being able to appeal

decisions of the Discipline and Appeal Committees. As the Professional Conduct Committee is the centre of experience with and knowledge of the incompetence problems that are arising (all written complaints received by the I.C.A.O. are considered by this Committee: there is no prior "filtering" by the administrative staff), it is best able to assess the need for deterrence or aggressive handling of particular problems and to assess the importance of the publicity of a "hard Institute line" on particular problems. Where the superior committees do not share its views on these issues, it is able to press those views to a higher level and ultimately to Council.

As well, the panel size of the Discipline Committee on its usual sittings is conducive to flexibility of sanctions. The full Committee normally sits in panels of seven or eight. Agreement on a re-education requirement is more likely to be achieved in such groups than in a sanction-imposing body which consists of forty or fifty members. Moreover, although both misconduct and incompetence matters are handled by the same committees, the involvement of the ultimate governing body (Council) is limited to cases of only the most serious gravity (in terms of sanction). Most of the competence matters, which lead to conditional suspension or admonishment with a re-education requirement, are resolved finally by the Discipline Committee. The limited involvement of Council also has the effect of leaving the power to decide on sanctions in the hands of those bodies with the most experience and involvement in the problems of incompetence that appear with practitioners.

The Institute attempts to get educational value from its disciplinary proceedings. As well as attempting to rehabilitate individuals, discipline is used to stimulate broader concern with competence throughout the profession. The guiding policy is "as much publication as possible". Although it is appreciated that publication of an individual's identity may amount to unduly harsh sanctioning of a minor transgression, the Institute attempts to get the maximum benefit from disciplining a particular C.A. by at least publishing the circumstances of the incompetent performance and the sanction imposed, in Checkmark, once the disciplinary proceedings have been concluded in particular cases. The reports of committee chairmen published annually (and to which reference was made above), operate as another means of reminding practitioners of the Institute's concern.

On the other hand, apart from the reporting in Checkmark, a professional accountant's journal, there is no demonstration or guarantee to the public of the Institute's concern with competence. There is no periodic reporting to any public body of the disposition of cases before the discipline mechanism. There is currently no lay involvement in the disciplinary system although it appears that the Institute has jurisdiction to include lay persons should it see fit.¹³⁸

Greater public awareness of the system's potential might produce more public inputs into it. The Executive-Director of the Institute notes that, "no formal advertising is carried out to inform the public to lay complaints; the private resources of the Institute could not sustain such a campaign, and no widespread problem is apparent to make such a program necessary ...".¹³⁹

It is impossible to comment upon the extent to which there is a competence problem in the profession, but the Professional Organizations Committee's survey of clients of accounting services (Accounting Client Survey) makes clear that many prospective complainants are unaware of the Institute's concern with discipline or do not choose to approach the Institute. A significant number of clients had difficulties with their C.A.'s. Some of these matters involved competence. While clients in the sample canvassed in the Accounting Client Survey changed firms, changed accountants within firms, or reviewed the matter with a senior partner of the accounting firm, no client approached any outside body which deals with complaints. Very few clients were aware of the Fees Mediation Service of the Institute.¹⁴⁰ It is unknown what effect advertising or publicity of Institute disciplinary activity would have on reporting by the (fairly sophisticated) clients of accountants in public practice.

The Institute's discipline system presents less risks than that of the Law Society that complainants will be dissatisfied with the consideration given to their complaints by the discipline agency. The Institute does not decline jurisdiction over a wide range of complaints received as does the Law Society. Though purely fees complaints are rejected, preliminary investigation is undertaken to assure that there is no quality component to the client's expressed dissatisfaction.

The Institute operates under some other input constraints. The Director-Ethics indicated that insurers of members do not report instances of claims against members to the I.C.A.O. (The reasons for this position are discussed in the civil liability paper.¹⁴¹) He reported.

however, that the I.C.A.O. had not as yet made any concerted effort to obtain information from insurers. Similarly no concerted effort has been made to encourage banks or securities commissions (which are in ideal positions to recognize poor performance) to report instances of perceived incompetence to the Institute. Officials of relevant taxation departments do not report to the Institute, although a client might do so where a taxation department rejected the client's position because of accounting deficiencies.

Attempts could be made to stimulate these sources by persuasion or by legislative change. Instead, the Institute is leaning towards mandatory professional inspection (peer review) as a more effective means of ensuring competence and of providing disciplinary inputs.¹⁴² This technique would permit universal access to practices although concentration might be upon high-risk groups (as identified by discipline and civil liability histories) at first. The beneficial results that could be expected from this approach are suggested by the significant results attained in discipline from the limited practice inspections undertaken currently when complaints are received about a member's practice. Practice inspection avoids many of the constraints on discipline identified in Part B above. The adoption of a practice inspection program might change significantly any comments or recommendations the P.O.C. might make about the efficacy of the I.C.A.O. discipline system.

Two further features of the present system should be noted. First, although the I.C.A.O. appears keenly aware of the educational and quality control functions of discipline it has not in the past used its discipline or complaints history as an input into designing

the content of continuing education courses to be offered annually. The I.C.A.O. notes that many of the basic accounting courses are adequate to meet deficiencies perceived through discipline and that, in any event, appropriate courses would not be popular, and therefore would be underattended while continuing education remains voluntary. The policy might change once the results of a current experiment in monitoring continuing education have been evaluated.¹⁴³

Secondly the late reporting of apparent incompetence by the I.C.A.O. to the P.A.C. should be noted. The P.A.C. has very limited investigative capacities and relies heavily on Institute-generated evidence in P.A.C. proceedings against public accountants. Because the I.C.A.O. does not report to the P.A.C. until I.C.A.O. proceedings have been completed, a C.A. disciplined by the I.C.A.O. is frequently not sanctioned by the P.A.C. until substantially later. Such C.A.s retain their public accountants' licences in the interim and as well, discipline by the P.A.C. may be inappropriate: by the time the matter has been considered there, a substantial portion of the I.C.A.O. "sentence" has frequently been served. The net effect of limited P.A.C. resources and late I.C.A.O. reporting is to transfer de facto disciplinary jurisdiction over C.A. licensees to the I.C.A.O.¹⁴⁴

III. DISCIPLINE BY THE PUBLIC ACCOUNTANTS COUNCIL FOR THE PROVINCE OF ONTARIO

(a) INTRODUCTION

The Public Accountants Council for the Province of Ontario exercises disciplinary jurisdiction over public accountants by virtue of its licensing and licence-revocation powers. The revocation of a licence has the effect of preventing former licensees from using the title "Public Accountant", or from practising or holding themselves out to be practising as public accountants.¹⁴⁵ The Council itself is composed of 15 elected members (12 elected from among the licensed members of the ICAO and 3 elected from among the body of non-ICAO licensed public accountants), and is fully described in the "History and Organization of the Accounting Profession". Information about Council disciplinary activity was obtained from the "History and Organization of the Accounting Profession"; from interviews by Steven Wilson and myself with the Council Registrar, Clifford Doughty; from the Accounting Client Survey (Janet Myers); and from examination by Steven Wilson of Council files on persons disciplined by the Council during the period January 1, 1975 - August 5, 1977.

(b) OUTLINE OF DISCIPLINE SYSTEM

The legislative framework for Council activity is established by The Public Accountancy Act and by the Regulations made under the Act (which include as Regulation 8, the Rules of Professional Conduct of the P.A.C.).

Three bodies participate in P.A.C. discipline. The administrative staff which consists of a Registrar and three stenographers and is responsible for receipt of complaints and investigation of them; the Enforcement Committee which consists of a Chairman and four members of Council and considers whether or not complaints laid before it should be laid before Council; and the Council itself, which holds formal

hearings to decide whether or not charges laid before it have been established and to determine the appropriate sanctions.

The disciplinary mechanism of the P.A.C. is estimated by the Registrar to expend about 15-25% of the expense budget each year. Accepting these figures, and based on the April 30, 1977 year-end expenditures of \$139,416, discipline cost the P.A.C. between \$20,000 and \$35,000. These figures would include much of the \$11,535 designated as professional fees expended (in the 1977 statement), some portion of \$59,401 expended on salaries, and various sundry expenditures. The Registrar and three stenographers involved in discipline comprise the entire P.A.C. staff and their duties include many matters other than discipline. Expenditure on discipline per P.A.C. licensee in 1976-77 can be estimated to be between \$4 and \$7 annually, based on membership of 5,805 licensees. The licence fee is \$25 per member and licence fees generated \$145,315 in revenue to the P.A.C. in 1976-77.¹⁴⁶

(c) JURISDICTION

The P.A.C. has disciplinary jurisdiction over licensees who have been guilty of "conduct disgraceful to [the licensee] in his capacity as a public accountant" (s. 18). The notion of "conduct disgraceful" is expanded by the Rules of Professional Conduct which elaborate specific matters which will be taken into account in determining whether or not a licensee has been guilty of "conduct disgraceful". The Rules are modelled upon, and appear to be an abbreviated form of those of the I.C.A.O.

The P.A.C. regards its jurisdiction as quite broad under the "disgraceful conduct" rubric. In particular, it has taken jurisdiction over and imposed sanctions upon licensees who have demonstrated

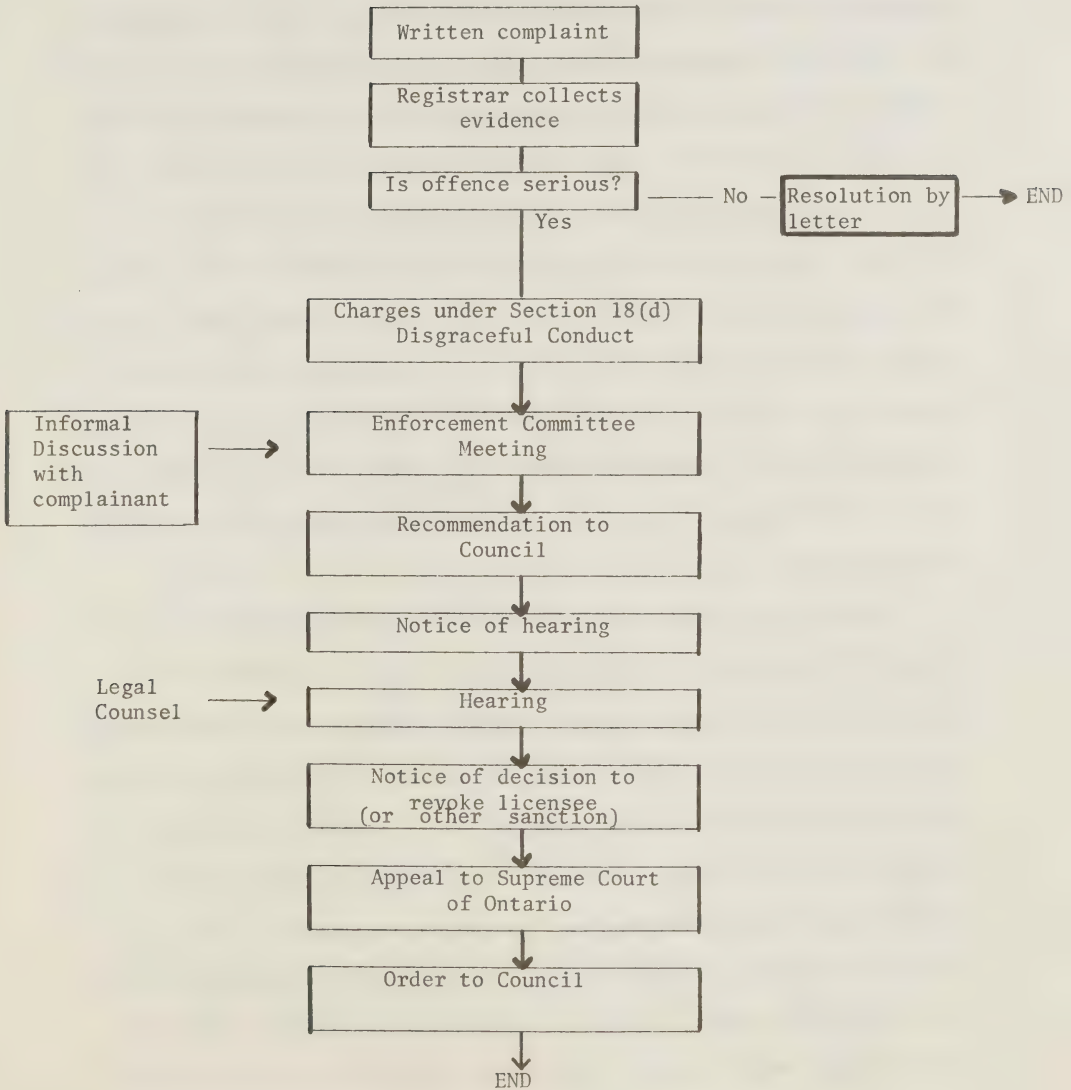
incompetence by failing to meet proper accounting standards. Nevertheless, the Council takes no jurisdiction over fees disputes. As these normally involve C.As., complainants are usually referred to the I.C.A.O. Fees Mediation Service.

(d) DISCIPLINE BY THE P.A.C.

The P.A.C. discipline system is described graphically in Figure VI.

FIGURE VI

P.A.C. DISCIPLINARY PROCEDURE



Complaints are received by telephone and by letter. Telephone callers are put through to the Registrar who discusses the matter with them. He asks complainants to reduce their complaints to writing. The P.A.C. will not act upon other than written complaints. No records are kept of telephone calls which do not produce a written complaint, but the Registrar confirmed that the writing requirement did deter some callers. The Registrar advises fees complainants to contact the Fees Mediation Service of the I.C.A.O., when the fees matter concerns a C.A. (it usually does). Most complaints are made by the I.C.A.O. or by other licensees: very few (the Registrar estimates 10-15%), are registered by members of the public. It should be noted that the Registrar normally informs the relevant professional accounting association (usually the I.C.A.O.), when a complaint which might be of interest to the association is received by the P.A.C. (Table XII below suggests that the I.C.A.O. at least is normally aware of the matter before the P.A.C. becomes apprised of it.)

The "vast majority of complaints" over which jurisdiction is taken are resolved by the Registrar himself through informal means. Letters or telephone calls to the accused licensee usually produce the appropriate response. Where the matter is not serious, the Registrar will not send the complainant's letter to the accused practitioner. Generally the Registrar is reluctant to divulge the identity of complainants if he can avoid it. In more serious matters, the Registrar seeks the permission of the complainant to pass the letter on to the practitioner for reply. The Registrar resolves complaints about "sloppy work" himself. He indicated that "as you are placing the licensee's livelihood in jeopardy" in further proceedings, he would be unlikely to refer such matters on to Council.

If any investigation beyond an exchange of letters with the accused practitioner is required, it is performed by the Registrar himself, with the assistance of counsel to the P.A.C. The P.A.C. was described by the Registrar as a "one-man - three secretary operation". He indicated that he is frequently unable to investigate matters that come to his attention. Although proposals for programs to provide investigative assistance to the Registrar (Assistant Registrar, part-time or contract private investigators), have been made from time to time, financial limitations have prevented their implementation. It should be noted that the Registrar is the sole investigator not only in respect of discipline matters, but also in respect of enforcement of the Act against non-licensees. In the period January 31, 1975 through July 11, 1977, 50 enforcement matters were handled by the Enforcement Committee of the P.A.C. while in the period January 1, 1975 through August 5, 1977, 20 disciplinary matters reached this body.¹⁴⁷

The authority of the Registrar, or indeed of any other level of the P.A.C. to conduct extensive investigations of the competence of licensees is unclear. While s. 18(3) authorizes "enquiries" to be held where ordered by Council (where it appears to Council that a licensee has been guilty of "disgraceful conduct"), it is not certain if the enquiry referred to is a preliminary investigation or is the hearing to be held where Council proposes to revoke a licence under S. 18(1)(d). It appears to refer to the latter with the result that only such investigation as the licensee permits can be undertaken.

In any event, most of the evidence in disciplinary proceedings against licensees is usually provided by the complainant. In particular, the I.C.A.O., the most significant source of competence complaints, normally makes available to the P.A.C. the evidence used against C.A. licensees in the (usually antecedent) I.C.A.O. disciplinary proceedings.

Where the Registrar regards the matter as serious enough to proceed further, it is laid before the Enforcement Committee. The Committee considers the matter, often interviewing the complainant and occasionally the accused licensee. If it feels that the matter merits it, the Enforcement Committee recommends that a charge of disgraceful conduct be heard by Council.

The Enforcement Committee has no authority to impose sanctions of any kind. Financial constraints have hampered its operations and it met only about three times (1 day each), in 1976, one time (1 day) in 1977, and one time (1 day), in 1978 (although it may meet once again this year). There were no Enforcement Committee meetings between January 30, 1976 and January 14, 1977. The prolonged delays in consideration of complaints such as those in cases 17 and 18 on Table XII (below), are attributable to the infrequency of Enforcement Committee meetings. The problem in proceeding more quickly appears to be the P.A.C.'s limited capacity to finance more vigorous activity.

Where the Enforcement Committee is satisfied with the licensee's explanation, or where less serious matters are involved, the Enforcement Committee directs the Registrar to inform the complainant to sue civilly or to complain to the appropriate voluntary association, normally

the I.C.A.O. If the matter is believed to be more serious, a charge is laid before Council where a formal hearing complying with the requirements of The Statutory Powers Procedure Act is conducted. Where the licensee is found to have been guilty of "conduct disgraceful to him in his capacity as a public accountant", the only express powers given to Council are to revoke the public accountant's licence or to decline to revoke the licence. However, Council has found that in some cases, suspensions or reprimands are more appropriate sanctions. Council has imposed such sanctions on the advice of counsel that the power to revoke implicitly includes the power to impose any sanction short of revocation. In some cases, Council has accepted an accused's undertaking to pass one or more professional development courses as a condition of not revoking the licence. In the one litigated case that raised the issue of Council's sanction powers, the point was not resolved clearly, although the P.A.C. believes that its power to suspend was implicitly recognized by the decision.¹⁴⁸ There is an appeal to the Courts from any decision of Council revoking a licence.

Council is required to meet once in every three months, but it normally meets on a minimum of six occasions annually, and occasionally it may meet nine or ten times in a year "depending on disciplinary matters". There is no lay participation in any part of the disciplinary procedure, nor does the Act allow for such participation (although the Registrar regards his participation and that of counsel to the P.A.C. as lay participation; neither are licensed public accountants).

The Enforcement Committee publishes a short report each year in the annual report of the P.A.C. The report notes the number of cases considered by the Committee and their ultimate disposition. Details

of the cases are not provided except that the section number of the section of the Act involved is cited. Names of parties sanctioned are published only where the sanction imposed is revocation of a licence. The annual report is sent to all licensees, all professional accounting bodies and to the Attorney-General. Whenever any sanction is imposed (from reprimand through licence revocation), a note is made in the file of the licensee sanctioned, and subsequent complaints are considered in light of the earlier P.A.C. disciplinary history. Moreover, the Registrar noted that the Enforcement Committee might tell him to "keep an eye on a person ... and if ... [the Registrar] ... is in the area he will ask if the person is acting in a fit and proper manner ... and ... if not, he'll start a new case against the person ... the problem here is again one of limited staff". The report of the Enforcement Committee for the year ended April 30, 1977 was as follows:

During the past year the committee dealt with seven complaints against licensees and twenty-eight against non-licensees.

Licensees:

Two complaints were closed, the committee being satisfied with the explanations received. Two other complaints were deferred pending receipt of further information. The remaining complaints were referred to Council for appropriate action under Section 18 of the Act. In one case, the licensee, on inquiry was found guilty under Section 18(1)(d) but, in consideration of all the circumstances, Council determined that his licence not be revoked. In the remaining two cases Council, after examining the evidence presented to it, served notices of intention to revoke these licenses pursuant to Section 18(2) of the Act. A hearing in one case was adjourned pending disposition of a motion in the Supreme Court of Ontario for an order prohibiting Council from revoking the licence. In the other case the licensee did not respond to the notice served on him and, after considering the evidence presented to Council, it was unanimously resolved that the licence of Mr. Peter Mitchell Miller of Toronto be revoked.

Non-Licensees:

After considering all of the evidence presented in respect of the twenty-eight complaints against non-licensees, most of which were minor in nature, the committee recommended that twenty-three of the complaints be closed as it appeared that satisfactory co-operation from the concerned individuals had been obtained. Charges under Section 24(1)(a) and (b) were laid against an unlicensed person. The trial in the Provincial Court in this case is pending. The remaining four complaints were deferred as further information was required before a decision could be made by the committee.

The standards applied by the P.A.C. throughout its discipline system are those of the I.C.A.O. and C.I.C.A., applied in the same way as they are applied by the I.C.A.O.

With the assistance of the Registrar, Steven Wilson of the Professional Organizations Committee staff was permitted to compile information about individual cases that reached the Enforcement Committee between January 1, 1975 and August 5, 1977. This data has been transcribed and appears on Table XII. It should be emphasized that the Table contains no information about cases in which a complainant refused to reduce the complaint into writing, and contains no information about cases which the Registrar was able to resolve informally with the accused accountant or in which the Registrar referred the complainant to a professional accounting association as being the more appropriate disciplinary forum.

TABLE XII ANALYSIS:

Many of the complaints considered by the Enforcement Committee involved allegations of incompetence. Cases 3, 5, 7, 8, 9, 13 and 14 are clear cases of complaints about failure to meet standards while cases 17, 18, 19 and 20 may contain an element of incompetence mixed into what is largely a misunderstanding (failure to communicate) or a fees dispute.

Of the 7 clear competence complaints, 6 involve C.A.'s, while one involves a public accountant under the 1950 "grandfather clause". In 5 of the 7 cases, the matter came to the P.A.C.'s attention through letters and information sent by I.C.A.O., informing the P.A.C. of I.C.A.O. disciplinary action against the accused accountant. In the other 2 cases, the complaints originated with lawyers. [The lawyers had (apparently), been engaged by clients of the accountant or third parties who had relied on audits performed by the accountant.] In at least 1 of these latter 2 cases, it is clear that the I.C.A.O. also knew of the matter though it is unknown whether or not the law firm had complained to the I.C.A.O. or the Institute had discovered the matter in some other way.

In all but one of the cases involving C.A.'s, the P.A.C. deferred to the sanction imposed by the I.C.A.O. In all but case 14, the I.C.A.O. ordered suspension with a re-education requirement and the P.A.C. deferred further consideration of the matter pending notification that the re-education requirement had been met and the I.C.A.O. suspension lifted. [This was the practical effect of the sanction imposed in case 8 - no further P.A.C. action on accused's undertaking to complete 3 C.I.C.A. courses - where the I.C.A.O. had suspended with a re-education requirement.] In the only aberrational case (case 14), the I.C.A.O.

expelled the C.A. while the F.A.C. (in effect), suspended him from practice for six months. In the only non-C.A. case, the matter is still pending, awaiting the outcome of litigation.

In the less clearly identified competence cases (17, 18, 19 and 20), 2 complaints were against C.A.s, one was against a C.G.A. and one was in respect of a person still practising as a public accountant despite having been expelled from the I.C.A.O. in 1968 for failing to maintain Institute standards. Three of these matters were resolved to the Enforcement Committee's satisfaction by an exchange of letters with the accountant involved, while in the fourth case (case 18(b)), the accountant has failed to respond to P.A.C. correspondence to him and the matter is still pending before the Enforcement Committee. In none of these cases (and indeed in none of the clear competence cases, with the exception perhaps of case 8) does there appear to have been any investigation of the competence of the accused generally beyond what was revealed in the information provided by the complainant and in interviews with the complainant in the course of preparation for formal hearings before Council (in the cases laid before Council).

The striking demographic feature of accused accountants is the dramatic overrepresentation of sole practitioners. In all 7 of the "clear competence" cases, the accused was practising alone and in all but one (case 7) of the "possible competence" cases, the accused was a sole practitioner. (In case 17, the firm size was unknown but the location indicates that it was quite likely a small firm). All public accountants found to have breached competence standards by the Enforcement Committee or by Council were sole practitioners. The Registrar informed us that he has noticed no other significant common demographic features of those against whom complaints are recorded.

Long delays, attributable to the difficulty of investigation and infrequency of Enforcement Committee meetings (the difficulties themselves being attributable to the P.A.C.'s limited finances), can be observed in many cases. It might also be noted that in all cases in which both the I.C.A.O. and P.A.C. had taken jurisdiction, the I.C.A.O. imposed a harsher sanction on members found guilty.

TABLE XIII - ANALYSIS:

Table XIII shows the incidence and disposition of complaints to and by the P.A.C. from 1964 to 1976. The Table confirms historically the current data contained in Table XII, which suggest that the P.A.C. receives only a very limited number of complaints about licensees annually. If the information in Table XII is a safe guide, about one-half of the complaints received by the P.A.C. annually over the period covered by Table XIII would have related to matters of competence.

(e) DISCIPLINE BY THE P.A.C.: GENERAL ANALYSIS

The P.A.C.'s disciplinary system is in an anomalous position. While capable of performing punitive, cleansing and deterrent functions, it is inappropriate to the performance of quality control, educational, dispute resolution and profession-protective functions which are regarded as more properly performed by the professional accounting associations. Its competence-related disciplinary activity is largely related to banning from public accounting (either permanently or arguably, temporarily) persons who have not performed at the required level. The limited role cast for P.A.C. discipline is matched by a severely limited budget that would impose almost insuperable constraints on the system even if the P.A.C. were to decide to adopt an active competence orientation.

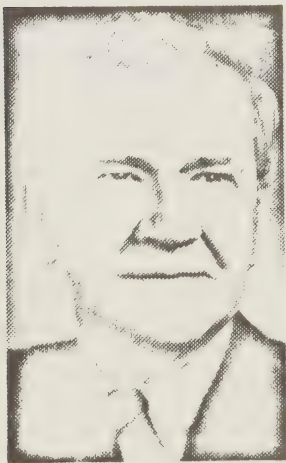
The P.A.C. receives disciplinary inputs in competence matters from a very narrow range of sources. Most noticeable is the almost complete shunning of the P.A.C. by other licensed public accountants who become aware of apparent incompetence. While public accountants, almost 90% of whom are members of the I.C.A.O., may report instances of perceived incompetence to their own association's discipline agency, they do not report to the P.A.C. Table XIII shows only one complaint in two years in which another licensed public accountant took any part in reporting a disciplinary matter to the P.A.C. Even then, the complaint appears to be an enforcement matter in which the accountant complained against was alleged to be holding out a bookkeeper as licensed (case 12).

No attempt has been made by the P.A.C. to encourage complaints from this useful source. Instead, the P.A.C. awaits disciplinary action by the accounting association (usually the I.C.A.O.), and proceeds upon the complaint and evidence provided by the association. The important filtering consequences of such a posture are evident.

Ignoring all the filtering that might occur within the associations themselves, a severely limiting effect is produced by the fact that the associations do not report all of their inputs or even outputs to the P.A.C. It appears, for instance, that the I.C.A.O. reports only those cases involving suspensions or expulsions from the Institute: apparently the Institute reports only those matters that might reasonably be considered to be serious enough to merit revocation of a public accountant's licence. The implication is that the I.C.A.O. regards this as the P.A.C.'s only function: in less serious affairs, educational, quality control, deterrent and dispute resolution functions are performed by the Institute. The P.A.C. Registrar appears to accept this role and he frequently refers less serious matters to the I.C.A.O.

Similarly, the P.A.C. receives very few client complaints, and substantially fewer than relevant accounting associations. This situation is likely produced because of the higher degree of client awareness of the associations than of the P.A.C. The P.A.C. does not advertise that it disciplines public accountants, nor does it publish (except as indicated above) the results of its disciplinary activities. The only notice to the public of the existence of the P.A.C. is given when the P.A.C. places an advertisement (in many publications), to announce the election of new officers and members. A small paragraph at the end of the announcement suggests the P.A.C.'s involvement in Professional Conduct Matters. The June 1977 "appointment notice" was the following:

THE PUBLIC ACCOUNTANTS
COUNCIL



R.D. MACKENZIE, FCA

The Public Accountants Council for the Province of Ontario announces the election of the following officers and members: President, R.D. Mackenzie, FCA, Hamilton, Vice-President, W.J. Troop, APA, Colborne, Secretary, R.R. Smith, FCA, Toronto, Treasurer, R.L. Ford, CA, London, Past President, W.J. Blakely, FCA, Kingston, Member of the Executive, J.P. Latendresse, CA, Ottawa.

Messrs. W.P. Fazackerley, APA, Windsor, B.B. Philip, FCA, Ottawa, J. Pollock, FCA, Hamilton, B.F. Thomson, CA, Walkerton, J.H. Turner, FCA, Peterborough, S.L. Wigle, FCA, Hamilton and L.D. Freedman, FCA, A.G. Watson, FCA, M.S. Werger, APA, all of Toronto.

.....

All persons who practise as public accountants in Ontario must be licensed under The Public Accountancy Act and must observe the Rules of Professional Conduct laid down by Council. Any information regarding these matters and the penalties for non-observance of the Act and regulations may be obtained from Mr. C. Doughty, Registrar, The Public Accountants Council for the Province of Ontario, 45 Charles Street East, Toronto.

The degree of lack of public awareness of the P.A.C. is indicated in the small number of client complaints recorded in Table XII. The impression is confirmed by the Accounting Client Survey, which showed no member of the client sample approaching an outside complaints body with a complaint against an accountant, and which reported that only 29.4% large-size clients, only 16.7% of medium-size clients, and no small-size clients were "familiar with the provisions of the Public Accountancy Act". Of those who were familiar with those provisions, almost one-half of the large clients and fully one-third of the medium clients felt that the Act affected them "not at all".¹⁴⁹ The P.A.C.'s financial straits do not permit any more aggressive attempt to bring notice of its existence and its concerns to the attention of public accounting clients.

The P.A.C.'s limited finances do not permit it to conduct the sort of general investigation of an accountant's competence which is required if an isolated error is to be distinguished from a general pattern of incompetent performance. It is unclear that the P.A.C. would be legally able to conduct such "practice reviews" even if it could afford to do so.

The P.A.C. is exceedingly constrained in its ability to sanction public accountants. Even aside from the doubt about the P.A.C.'s ability to do anything other than revoke public accounting licences, the Council is wholly dependent on the activities and capacity of other accounting associations to provide educational facilities. The P.A.C. does not itself administer or take any part in the design of professional development courses: it has no authority to order re-

education, periodic re-certification, or peer review of any demographically-described group of public accountants identified through the discipline system as presenting a substantial lack of incompetence. The only general educational function which the P.A.C. could possibly perform is undertaken in a very unsatisfactory manner. Careful reporting of at least the circumstances which led to admonitions or findings of disgraceful conduct could serve educational and more specific deterrent functions for other public accountants. The current practice of mere reference to the appropriate section number of The Public Accountancy Act does not provide useful guidance.

Insofar as C.A.'s are concerned, the P.A.C. serves an almost insignificant and reactive role. In effect, the P.A.C. generally approves in respect of the C.A.'s public accountants' licence, sanctions imposed by the I.C.A.O. in respect of Institute membership. In these circumstances, a strong case can be made out for one of two positions: either (i) allow findings of the I.C.A.O. disciplinary mechanism and the sanctions imposed by it to be binding on the P.A.C.; or (ii) abolish the P.A.C.'s licensing control, at least over C.A.'s. These alternatives follow from the de facto exclusive disciplinary control of the I.C.A.O. over C.A.'s.

The I.C.A.O. has suggested alternative (i): that P.A.C. sanctions should follow automatically from I.C.A.O. sanctions. The P.A.C. disagrees.¹⁵⁰ It appears that so far as discipline for incompetence is concerned, little is gained by dual disciplinary control. Alternative (ii) is under study generally by the P.O.C. and it is impossible to comment upon the matter here beyond noting that the only significant

P.A.C. disciplinary role appears to be in respect of non-C.A. licensees, and more specifically in respect of public accountants under the "grandfather clauses" of 1950 and 1962, who are the only group of public accountants not subject to discipline by a professional accounting association. The number of such persons in 1976 was approximately 326 and if present licensing requirements are retained, can be expected to be reduced by attrition over the next few decades.

Any decision on the future of P.A.C. discipline is intimately associated with decisions on licensing generally. If entry into public accounting continues to be de facto controlled by the I.C.A.O. there is little need for or prospect of improving the P.A.C. disciplinary mechanism. If access to public accounting is to become available to a significant number of non-professional-accounting-association members, the P.A.C. disciplinary system should be restructured to resemble the present I.C.A.O. model, incorporating suggestions for change made in this paper and those under consideration by the I.C.A.O. In either case, the relationship between discipline for incompetence within associations and discipline for the same incompetence by the licensing body should be re-examined thoroughly.

IV. DISCIPLINE BY THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO

(a) INTRODUCTION AND SOURCES OF INFORMATION

Severe limitations are imposed on the effectiveness and importance of C.G.A.A.O. discipline by factors flowing from the overall regulation of the practice of accounting in Ontario. The choice of the I.C.A.O. as the qualifying body for entitlement to licensing under s. 14 of The Public Accountancy Act (together with the P.A.C.'s limited utilisation of its discretion to waive the formal requirements for public accounting licensing), has meant that very few C.G.A.'s are licensed

to practise public accounting: only about 73 C.G.A.'s were licensed public accountants as of the end of 1977, while approximately 6,000 public accountants were licensed in the province at that time. The C.G.A.A.O. estimates that about 275 of its members (including members licensed to perform public accounting and unlicensed members), are "in public practice". These 275 members represent only about 11% of the C.G.A.A.O. membership. Only about one-half of these 275 C.G.A.'s would have been in practice as sole practitioners or partners, while the remainder would have been employees.¹⁵¹ To the extent that discipline for incompetence is a phenomenon of the sole or small practitioner serving the public, there are very few C.G.A.'s in Ontario who could become subject to such discipline. The vast majority of C.G.A.'s are engaged in non-public accountancy in industry, government and commerce.

Moreover, even those C.G.A.'s in public practice appear to spend much of their time performing functions which could be undertaken by unlicensed persons. Figure VII shows that C.G.A.'s in public practice earn more than 50% of their fees from non-public accounting functions. They earn very little from individual clients: their clients tend to be small businesses.

A second major limitation flows from the first: the ultimate disciplinary sanction of the C.G.A.A.O., expulsion from the Association is of limited significance. A person entitled to use the "C.G.A." designation has no legal advantage over one not entitled to it and the existence of any practical advantage may also be questionable. The only direct effect of suspension or expulsion from the Association is that under the C.G.A.A.O. Code of Ethics and rules of professional conduct,

FIGURE VII

Selected Characteristics of C.G.A. Public Accounting Firms

1.

<u>Number of Firms</u>	<u>C.G.A.'s per Firm</u>
50	1
6	2
2	3

2. Percentage of gross fees earned from:

Auditing	10.5%
Other public accounting	27.2
Corporate Taxation	6.7
Management Advisory Services	9.4
Book-Keeping	27.6
Personal Taxation/Estate Planning	16.6

3. Percentage of gross fees earned from:

Businesses with total sales of	
\$0 - \$1 million	78.1%
\$1 million - \$25 million	7.5
\$25 million +	0.9
Individuals	11.5

4. Percentage of gross fees earned in following fee categories:

\$0 - \$1000	66.7%
\$1001 - \$10,000	31.4
\$10,001 - \$50,000	1.0
\$50,001 +	0.9

Source: Professional Organizations Committee's Survey of Accounting Firms.

other members of the Association are required to obtain through the Association the facts concerning the suspension or expulsion before knowingly employing a person "who has been expelled or who is under suspension from any accounting body".¹⁵²

The result is that the discipline procedure is very rarely employed. The C.G.A.A.O. intends to rely primarily on continuing education as the major plank of its competence platform. The C.G.A.A.O. indicated that for all practical purposes, client complaints have been non-existent. As of April, 1977, the C.G.A.A.O. had received only two complaints in the preceding five years: both involved fees disputes and both were satisfactorily resolved without recourse to formal proceedings. In the seventeen months between January 1976 and May 1977, the unusually high number of eight complaints was received: four from clients, two from other C.G.A.'s and two from C.G.A. officials.¹⁵³

(b) JURISDICTION

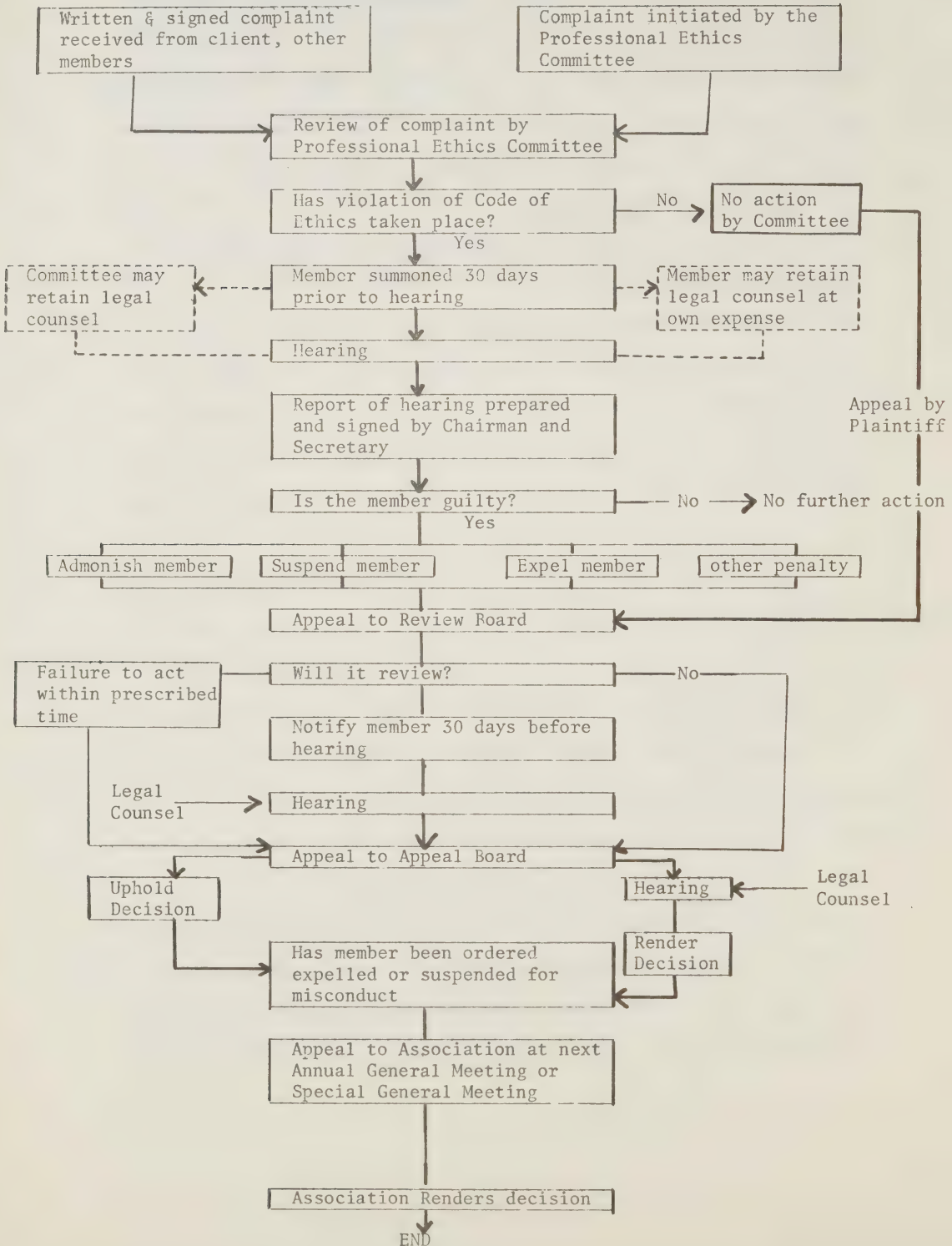
The Letters Patent of Incorporation of the C.G.A.A.O. give the association authority to discipline any member guilty of "fault or misconduct in the practice of his business or profession". Article 15 of the By-laws permits action on complaints charging members: with any breach of discipline; with any action derogatory to the honour of the association; or with any matter connected with the professional duties of the member. Under the authority granted by Article 15(1)(d) to the Board to make rules "regulating members' conduct and declaring what shall constitute a breach of discipline", the Board promulgated a "Code of Ethics and rules of professional conduct", in May 1975. The relevant sections (particularly those in sections 200, 400, 500, 600, and 1,000) are

reproduced in Appendix IV. Express standards of competent performance similar to those expressed in the I.C.A.O. Rules are established and adherence to them is enforced by disciplinary action. It is noteworthy that by sections 406, 503 and 601, a duty is cast on members to report to the C.G.A.A.O. substandard performance of other members.

(c) DISCIPLINE BY THE C.G.A.A.O.

The disciplinary procedure of the C.G.A.A.O. is illustrated graphically in Figure VIII.

C.G.A.A.O.
DISCIPLINARY PROCEDURE



It is the duty of the Secretary to receive all complaints against members from whatever source. All complaints must be in writing and signed by the complainant. Complaints may be received from clients, other members, or may be initiated by the Professional Ethics Committee, which is also empowered to determine whether there is a need for disciplinary action.

"In the event that the Professional Ethics Committee concludes that a violation of the Code of Ethics has taken place, the Committee summons the member involved to appear at the Committee's next meeting. If the Committee fails to act upon a complaint, the plaintiff may present his complaint either to the Review Board or to the Appeal Board for consideration. The Review Board consists of the Executive Committee of the Ontario Association while the Appeal Board consists of the Board of Governors.

"It is the responsibility of the Professional Ethics Committee to assemble the necessary evidence, documents and/or statements which are required to be presented at the hearing and to hear evidence of witnesses. The Committee is further empowered to summon any member and to request any books, documents and other related materials.

"At the hearing of a complaint, the member charged, may at his own expense, be represented by legal counsel or any other person to question any witnesses present or to present evidence or arguments on behalf of the defendant. ...

"In the event that the finding is against the member charged, the Committee has available 4 different sanctions. These are:

1. Admonish the guilty member, or
2. Suspend the guilty member, or
3. Expel the guilty member, or
4. Impose such other penalty as the Committee sees fit. ...

"Two levels of review are available to a member who has been found guilty. The first appeal is to the Review Board which must decide if it will review the case. If the Review Board does not decide to review the case or fails to act within the prescribed time the affected member may then appeal to the Appeal Board. The Appeal Board may either uphold the decision or hold a hearing, at which the member may be represented by legal counsel ..." 154

Any member suspended or expelled by the Board for misconduct may appeal to the Association at its next Annual General Meeting or at a Special General Meeting.

Information about the activity of the discipline mechanism of the C.G.A.A.O. was provided to us by the Association and is presented, transcribed, on Table XIV.

Three competence-related matters were considered during the period January 1976 - May 1977. All complaints were by clients against sole practitioners licensed to perform public accounting. One case appeared to involve a business dispute and family squabble (case 1), while the other two cases involved delay by the C.G.A. involved, and produced informal warnings or reprimands from the Professional Ethics Committee (case 3 and case 8).

The C.G.A.A.O. has never had a serious competence complaint before its discipline system, nor has it had to consider questions of establishing and applying standards to test skills, knowledge or performance. Similarly, it has not had occasion to apply differing sanctions to varied competence problems or to establish policies in respect of publicity of the circumstances or names of members involved in disciplinary proceedings.

Changes in the regulatory framework of accounting could increase the relevance of discipline of C.G.A.A.O. members: in the interim, and given the constraints described above, discipline cannot be expected to be a significant factor in encouraging the continuing competence of members of the Association.

(d) C.G.A.A.O. NOTES

The following information was received from the Assistant Executive Director of the C.G.A.O.O. too late for integration into the above discussion.

1. Budget Information

Since CGAAO is a voluntary association, enforcement on the one hand and complaints and discipline on the other, [are] treated as separate issues.

Enforcement

Enforcement is handled as an administrative matter by the Executive Director with advice from the Association's legal counsel. There are two main mechanisms for identifying situations where enforcement action is necessary:

- a) Subscription to press clipping service to identify and check all public printed media reference to the CGA Association and the CGA designation. Cost approx. \$1,000.00 P.A.
- b) Membership vigilance and reporting, which are both encouraged and required. "Cost" is not identifiable.

The administrative and legal costs of follow-up are not separately identified in the budget, but are minimal in any event.

Discipline

The committee consists of five members appointed by the Board of Governors. They are unpaid, but receive reimbursement for travelling expenses. The Committee is supported by two paid administrative staff on a part-time basis as required, and legal counsel.

Budget Data 1977-1978

Committee Costs	\$450
Hearing Costs	530
Legal Costs	2,000
Staff Salaries	1,300
	<u>\$4,280</u>

Publicity Policy

Names of members suspended or expelled are published. Names of members reprimanded are not published.

Information on the nature of hearings and disposition of changes is made available to members in memoranda, newsletters and annual committee reports. In addition, the Association's Code of Ethics and Rules of Professional Conduct is reprinted and distributed at intervals of two or three years.

Application of Standards

This question can be broadly categorized as follows:

- Standards of Conduct
- Standards of Performance
 - Application of generally accepted accounting principles.
 - Quality of service

The standards of conduct matter involves the application of rules defined in the Association's Code of Ethics.

The question of Standards of performance measurement and appraisal is a little more difficult. It involves, first of all, the determination of whether or not the member, in doing his job, follows accepted practice. To a great extent, accepted practice is codified in the CICA handbook, to which the Association subscribes and contributes both financial and manpower resources. Misapplication of accepted standards is relatively easy to determine. More difficult to assess are charges involving the quality of service. The difficulty here is that the quality of service rendered in any one situation or case cannot be judged by reference to any set of codified standards, but must be judged subjectively on the particular facts. It is quite possible for example, that making a particular choice from among alternative generally accepted accounting treatments, each of which is acceptable from a technical standpoint, an accountant may choose the alternative that gives the least long-term financial benefit to the client or employer. Whether such a situation would amount to incompetence, or merely an excusable lack of specialized knowledge the accountant cannot reasonably be expected to possess would of course depend upon the circumstances of the particular case.

Records of Complaints

The Ethics Committee keeps a separate record of all complaints received, and any subsequent hearings. The individual files of people dealt with also contain appropriate records of complaints and their disposition.

Demographic Trends

The volume of activity has not been such that any trends are apparent.

Telephone Complaints

Although complaints usually originate by telephone, we insist that they be documented in writing for the protection of all concerned.

Staff with Ethics Committee support responsibilities are available, of course to discuss concerns or handle general enquires on an ongoing basis. Minor disputes or misunderstandings, if they can be settled informally at this level, do not form part of the record.

Public Complaints to Board

This has never been done.

Lay Representation on Discipline Committee

Apart from legal counsel, there are no "outside" people involved in the discipline process.

Discipline Questionnaires

At the meeting with Steve Wilson, we were asked to discuss any recent cases, and to provide completed questionnaires for them. We did not go back beyond 1976. In fact, however, apart from enforcement situations, complaints have been at an extremely low level.

Identification of Complainant

The accused always receives from us a copy of the complaint letter and is invited to comment as part of the initial screening process.

Affidavits

Complaints must be submitted in written form, but need not be sworn.

Publicity

Information regarding discipline cases, including the nature of the charges and penalties imposed for offenses, is sent to all members and students of the provincial Association, and to our National Association.

Follow-Up

We have yet to experience any ongoing problem with a member's performance. Any such situation would be followed up by the Ethics Committee, and, in the case of a public practitioner, by the Public Accounting Committee.

Frequency of Meeting

In the fiscal year just ending, our Ethics Committee met eight times. The meetings involved six half days and two full days.

Committee and Tenure

The committee chairman is appointed annually from the Board of Governors by the Executive Committee. The Committee chairman appoints his committee. Members are eligible for reappointment from year to year. Normal tenure is two or three years.

V. DISCIPLINE BY OTHER PROFESSIONAL ACCOUNTING ASSOCIATIONS

(a) SOCIETY OF MANAGEMENT ACCOUNTANTS OF ONTARIO

Members of the S.M.A.O., who are entitled to use the designation R.I.A., are employed almost exclusively by governments and industry.

In 1975, about 4,125 persons were registered or general members of the Society. This membership includes about 300 C.A.'s and 65 C.G.A.'s who carry dual designations. No R.I.A. who holds solely that designation

has ever received a licence to practise as a public accountant, and only about 5% or less of the Society's members (those who carry dual designations), are in public practice.

Client complaints to the S.M.A.O. about R.I.A.'s are virtually non-existent. The Registrar of the P.A.C. indicated that no complaints had ever been received about a member of the S.M.A.O. practising as an industrial accountant, cost accountant or cost consultant (which practices are expressly permitted by s. 34 of The Public Accountancy Act despite the lack of public accountants' licensing of the S.M.A.O. member practitioner). The Executive Director of the S.M.A.O. indicated that he thought the excellent non-complaint history was evidence that Society members were performing satisfactorily. However, it is likely that the generally employee status of members and their virtual insignificance in public practice largely accounts for the absence of complaints.

Nevertheless, a formal discipline mechanism has been established. It is illustrated graphically in Figure IX and is described in the "History and Organization of the Accounting Profession" as follows:

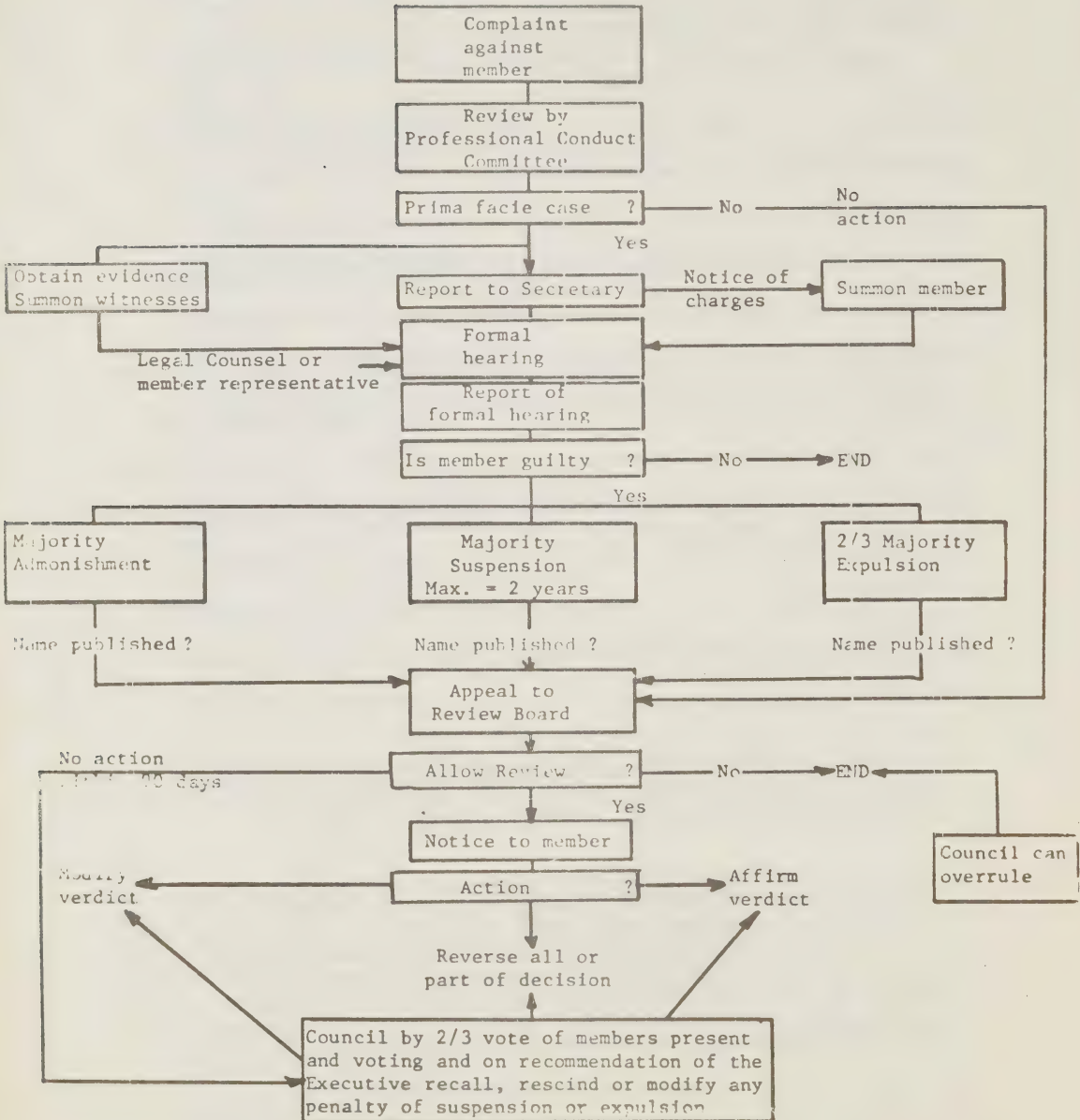
"Any complaint, whether or not client initiated, is dealt with as a breach of the code of ethics and processed under the disciplinary procedures established by the Society.

"The Professional Conduct Committee is responsible for the initiation of the disciplinary work of the Society. It consists of a Chairman and 4 members all appointed by Council on the recommendation of the Executive. The Committee conducts an initial review of the complaint. If upon consideration of the complaint, it appears to the Committee that a prima facie case is established showing a violation of any by-law or any provision of the Code of Professional Ethics or

S. M. A. O.

FIGURE IX

DISCIPLINARY PROCEDURE



conduct discreditable to a management accountant, the Professional Conduct Committee reports the case to the Secretary of the Society. The latter summons the member involved to appear before the Professional Conduct Committee. If the Professional Conduct Committee dismisses the complaint or fails to act within 90 days of the complaint, the member referring the complaint may present it in writing to the Review Board.

"If a formal hearing is held, the Committee is responsible for assembling evidence, documents or authenticated statements as required and is empowered to hear evidence of witnesses and to receive additional evidence and statements in the course of the hearing. The individual charged has the right to be present during the hearing and to be represented by legal counsel or by another member. The Society bears the cost of any formal hearing.

"If, after hearing the evidence presented by the complainant and by the defence, the Professional Conduct Committee finds the defendant guilty of an offence, it may decide, by a majority vote of the members present and voting to admonish or suspend for a period of not more than two years the member against whom the complaint is made, or, by a two-thirds vote of the members present and voting to expel the member. As a further sanction, the Professional Conduct Committee can decide by a majority vote whether the statement of the case and the published decision is to disclose the name of the member involved.

"A member found guilty by the Professional Conduct Committee may appeal to the Review Board. The Review Board is appointed by Council on the recommendation of the Executive and consists of a Chairman and 4 members, none of whom are members of the Professional Conduct Committee. If the Review Board decides not to review the case, or takes no action within 90 days, the member may appeal to the Council of the Society. If the Review Board conducts a review, the member has a further right of appeal to the Council.

"The Council by two-thirds vote of members present and voting and on the recommendation of the executive may recall, rescind, or modify any penalty or suspension or expulsion.

"If the Ontario Society requests the resignation of a member, or has withdrawn from the Register of the Society the name of any member for reasons of unprofessional conduct, the Secretary of the Society must inform the Secretary of the Canadian Society of the name of the member and the reason for the action taken. The Secretary of the Canadian Society then transmits this information to the Secretary of each provincial Society. The Ontario Society also agrees to honour the disciplinary actions of all other Societies with which it is affiliated." 155

The relevant excerpts from the S.M.A.O. Code of Professional Ethics are contained in Appendix V. Particular reference should be made to Section 4.00 where express requirements of competence are established, and especially to Sections 4.04 and 4.05 which require members to report perceived incompetence of other members and to bear some responsibility for compliance with the Code by their associates.

Despite the elaborate structure, only 13 complaints have been received by the Society since September 1973. They are described in Table XV which was transcribed from material supplied by the Executive-Director of the S.M.A.O. 8 of the complaints concern students, 2 concern non-members and 3 relate to members. None of the complaints about members (or students), involves competence in any sense.

Discipline does not appear to be a relevant factor in promoting the competence of members of the S.M.A.O. The nature of the professional services they render suggest that it would be difficult for S.M.A.O. discipline to compete with market forces and discipline by employers as a primary motivation to R.I.A.'s to perform competently.

(b) DISCIPLINE BY THE INSTITUTE OF ACCREDITED PUBLIC ACCOUNTANTS

This voluntary association of accountants numbers about 160, of whom about 135 are non-I.C.A.O. licensees under The Public Accountancy Act while the remaining 25 are unlicensed public accountants who work primarily for governments. The Institute and its activities are described in the "History and Organization of the Accounting Profession in Ontario."

The Institute does not have a Code of Ethics or Rules of Professional Conduct in written form. The majority of the members being licensed by the P.A.C., the I.A.P.A. is content to allow the P.A.C. to discipline incompetent members in the first instance. If the I.A.P.A. representatives on the P.A.C. report that proceedings have been taken against a member of the Institute, the I.A.P.A. may set up a disciplinary committee to act and to pass the matter to the Board which has the right to sanction members by expulsion or suspension.

The I.A.P.A. described their discipline system as follows:

"While it is not common for clients to approach this Institute to complain about their relationship with a practitioner who is a member of the Institute, there have been cases where such complaints have been received. When such a complaint is received, a committee is appointed by the board of directors of the Institute to investigate the matter and to try to arrive at a mutually satisfactory agreement between the member and the client. Should this fail, the committee would make a report on its findings and any recommendations to the board, which would then take any action it deemed appropriate. Our board has no power to impose a settlement on a member without his consent.

A similar procedure is carried out with respect to disciplinary matters but in this area, the board does have the right to suspend or expel a member who is convicted of unprofessional conduct. We have rarely had any occasion to use this power." 156

Expulsion from the Institute is legally (and likely practically) irrelevant to the ex-member's ability to earn a livelihood: far more relevant would be the loss of a public accountant's licence through P.A.C. discipline in the case of licensed members.

If the disciplinary jurisdiction of the P.A.C. is amended, consideration would have to be given to appropriate mechanisms for the discipline of such persons as I.A.P.A. members. It should also be recalled that some licensed public accountants belong to no accounting association, as the I.A.P.A. membership does not include all licensed accountants who are not members of the I.C.A.O. or C.G.A.A.O.¹⁵⁷

PART F - DISCIPLINE IN THE ENGINEERING PROFESSION

I. SOURCES OF INFORMATION

The information presented in this Part was compiled from the following sources: Appendix D to the Research Directorate's Staff Study, "History and Organization of the Engineering Profession"*; other bibliographic sources listed in the bibliography at the end of this paper; interviews with executive members of the Association of Professional Engineers of Ontario (A.P.E.O.) by Steven Wilson and myself; data supplied to the researchers by the A.P.E.O.; the Architecture Engineering Client Survey (prepared for the P.O.C.); and data obtained by Steven Wilson with the assistance of the Director of Legal and Professional Affairs (D.L.P.A.) of the A.P.E.O. (culled from the files of the D.L.P.A. and the Practice and Ethics Committee of the A.P.E.O.), which forms the basis of Tables XVI and XVII.

II. OUTLINE OF A.P.E.O. DISCIPLINE SYSTEM

The legislative framework for the operation of the A.P.E.O. discipline system is established by four instruments. First, The Professional Engineers Act which creates the A.P.E.O. defines one object of the Association as the establishment and maintenance of standards of knowledge and skill among its members.¹⁵⁸ In furtherance of this object, the Act allows the council of the A.P.E.O. to make regulations defining "professional misconduct" for the purposes of the Act (s. 7(1)(d)). The Act provides for discipline by council

*Referred to below as "History and Organization of the Engineering Profession."

(or its delegate, s. 25(20)), in cases of "professional misconduct".

Secondly, the Regulations enacted under the Act define in great detail "professional misconduct", and specify details of the formal disciplinary procedure. Thirdly, By-law No. 1 of the A.P.E.O. establishes committees, and specifies the membership composition and jurisdiction of committees. Of particular importance is The Practice and Ethics Committee, charged under By-law No. 1 (s. 87) with advising council on all matters referred to it concerning practice and ethics in the profession; with the investigation of complaints; and with the advising, admonition and counselling of members engaged, or who might become engaged in inappropriate conduct. And finally, the Code of Ethics of the A.P.E.O. establishes standards of professional conduct which, if not maintained, could lead to discipline of the member involved. Of particular relevance to competence is Section 6(b) of the Code, requiring engineers to undertake only such work as they are competent to perform by virtue of their training and experience and to retain and co-operate with other engineers and specialists where advisable.

The bodies involved in discipline in the A.P.E.O. include: A.P.E.O. staff and executive personnel; The Practice and Ethics Committee; and the council of the A.P.E.O. The staff is composed of the Director of Legal and Professional Affairs, his two assistants and secretarial and clerical assistants. This group spends a significant portion of its working time engaged in disciplinary matters. It is primarily engaged in the preliminary screening and investigation of complaints. Occasionally, consultants are engaged to report to the staff, or to the Practice and Ethics Committee. The Practice and Ethics Committee is a standing committee of Council,

composed of two members of Council, three or more members of the A.P.E.O. appointed by council, and the president, vice-presidents and immediate past president of the A.P.E.O., ex officio. It engages in the assessment of matters laid before it by the staff and decides if formal charges should be laid before council or if informal sanctioning of an accused engineer is proper in any particular case. The A.P.E.O. Council hears formal discipline complaints and adjudicates upon them, imposing sanctions that are final unless successfully appealed to the Courts. Until amendments to the Act in 1968-69, the entire Council sat on discipline hearings. Now Council may appoint a discipline committee composed of five members of Council to act on Council's behalf, and a decision of the committee is a decision of Council (s. 25(20)).

The Practice and Ethics Committee met twelve times in 1977: the meetings are evening meetings that begin about 7:00 p.m. and continue until 10:00 or 11:00 p.m. Four formal discipline hearings were held before Council during 1977: this number appears to be just slightly above average. The A.P.E.O. expends about 12% of its total budget (about \$240,000, based on a total budget of about \$2 million), on legal and related expenses of discipline and enforcement of the Act. The majority of expenditures are in respect of discipline though possibly 40% are in respect of enforcement. Based on annual expenditures of about \$2 million dollars and A.P.E.O. membership of about 42,000 members, the A.P.E.O. can be estimated to spend about \$144,000, or between about \$3 and \$7 annually per member, on discipline. The A.P.E.O. estimates that between 10% and 14% of its staff resources are invested in discipline. ¹⁵⁹

III. JURISDICTION

A.P.E.O. jurisdiction over competence matters is clearly and widely granted by the relevant instruments. The Act allows discipline for "professional misconduct" and permits council to define the phrase. Council has done so by the following Regulations:

8. For the purposes of the Act and the regulations, "professional misconduct" means,

- (a) gross negligence;
- (b) infamous, disgraceful or improper conduct in a professional respect, including any violation of the code of ethics prepared and published by the council pursuant to section 9 of the Act;
- (c) incompetence;

...

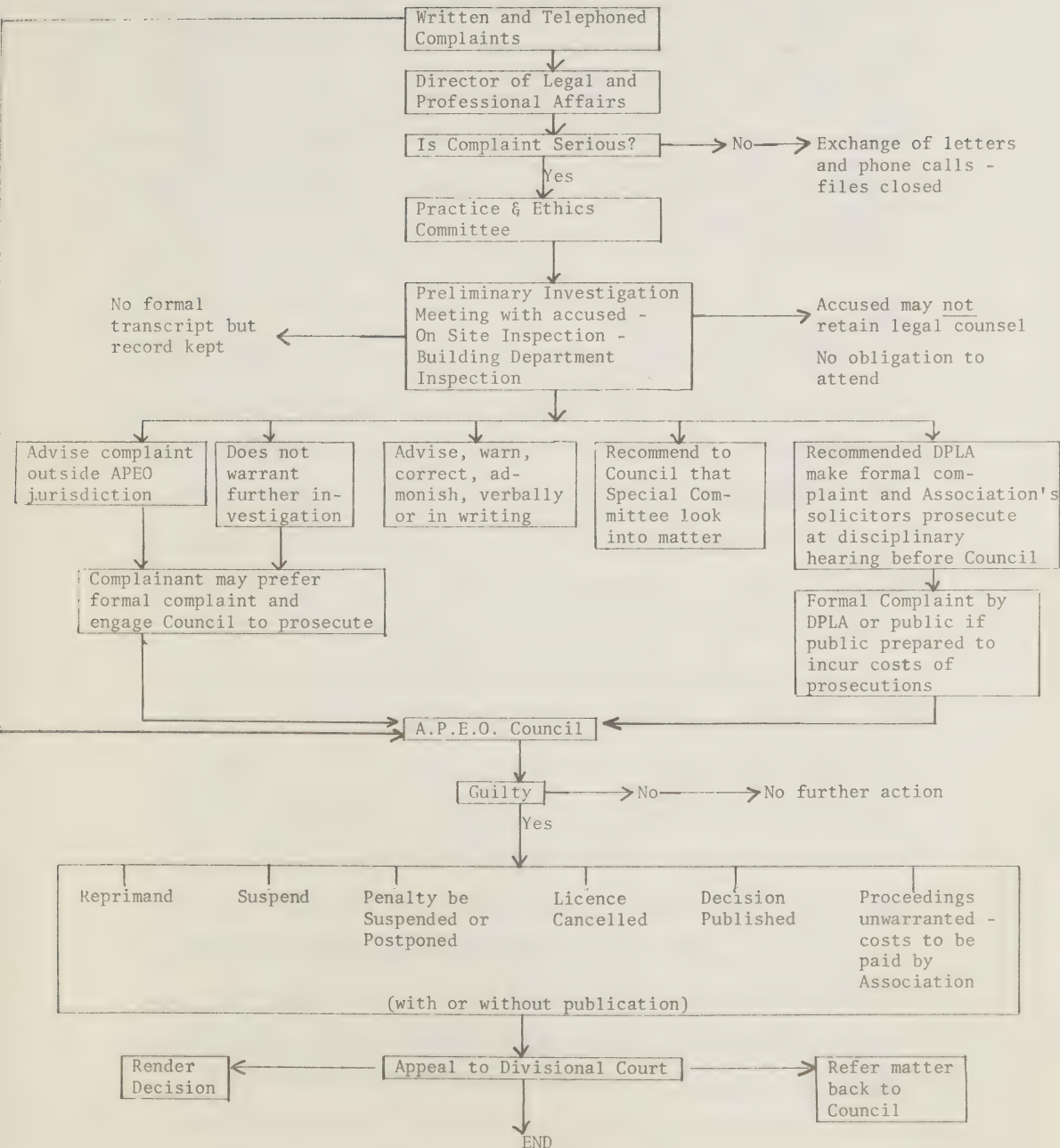
- (e) continued breach of the regulations or by-laws of the Association;

9. For the purposes of section 8,

- (a) "gross negligence" means any act or omission in the carrying out of work of a professional engineer that shows a reckless or deliberate disregard of or indifference to the rights or safety of others;
- (b) "incompetence" means lack of adequate knowledge of, or continued neglect or failure to exercise, the ordinary skills of a professional engineer;
- (c) "serious criminal offence" means ...

The A.P.E.O. is thus concerned both with members' possession of adequate skills, abilities and knowledge, and with diligent application of them by members in particular cases. The Association therefore takes jurisdiction over all matters brought to its attention and does not decline to act in cases where negligence is alleged. The only exceptions relate to cases which are no more than mere fees disputes

A.P.E.O. DISCIPLINARY PROCEDURE



or cases in which the dispute is purely contractual (e.g., extent of services promised and delivered). In such cases the A.P.E.O. staff may try to arrange a voluntary arbitration of the dispute. The Association will provide a standard form of submission to arbitration and the names of suitable arbitrators. All costs are borne by the parties and the A.P.E.O. does not participate in the arbitration in any way. The A.P.E.O.'s aim is "to promote settlement of disagreements without the necessity of the parties commencing expensive and lengthy litigation". 160

IV. DISCIPLINE BY THE A.P.E.O.

When written or telephoned complaints are received by the A.P.E.O., the matter is passed to the Director of Legal and Professional Affairs or to one of his assistants. While there is no requirement (in any of the instruments establishing the disciplinary system) that complaints be written, the staff usually requires that the complaint be reduced to writing and proceedings normally end at this stage if a written complaint is not received. One reason given for this policy was concern for the potential need of the complainant as a witness should matters proceed farther. However the staff may act on a complaint that appears to be well-founded even in the absence of writing: it is a matter of staff judgment. For instance, we were told that if an official of the Ministry of Labour were to call, the matter would be followed up even if no written complaint were ever received. No record is kept of telephoned complaints not acted upon in this way. Numbers are uncertain but there is no doubt that some telephone complainants do not submit written complaints and that such matters go no farther.

Where a letter is received, or a determination is made to act on a telephone complaint, the matter is informally assessed by the Director and his staff. The nature of the complaint, severity of offence charged, objective of the complainant and the obligation of the A.P.E.O. to investigate further are considered. In "the great majority of cases", the staff members attempt to reconcile the differences between the parties through encouraging discussion between them in order to reach an acceptable settlement. Only where the staff considers the complaint to be serious enough to be dealt with by a more formal process will it refer the matter to the Practice and Ethics Committee. It is at this preliminary staff screening level that fees disputes are resolved to be outside A.P.E.O. jurisdiction. It appears that the staff would consider whether the dispute raised simply a question of fees or whether allegations of incompetence were involved as well. A record is kept of matters screened out at this stage and of matters being held pending the receipt of further information. The Director files these complaints in a "Miscellaneous File": the contents of the file are indicated by complaints numbers 60 through 80 on Chart B of Table XVI below. The staff may exchange letters or telephone calls with the parties at this initial screening level, and may close files, where they feel it appropriate to do so. The staff does not usually disclose the identity of complainants (although the Practice and Ethics Committee normally does).

More serious matters are passed to the Practice and Ethics Committee for informal investigation, and for possible minor sanctioning or for recommendation to formal discipline. The Committee, a standing committee of Council, presently includes in its membership the lawyer of at least ten years' standing at the bar in Ontario, who is one of the two lay persons authorized to be appointed to the A.P.E.O. Council

under s. 4(6) of the Act. There is no formal requirement that it do so, however. Similarly, the Committee could, though it presently does not, include as one of the two council appointees, the lay councillor appointed under s. 4(6)(a) of the Act.

The formal terms of reference of the Committee are to:

- (a) advise the council on all matters referred to it in connection with the practice and ethics of the profession;
- (b) provide for informal investigation of any and all complaints referred to it or of any matter which it considers likely to affect the ethical practice of the profession;
- (c) provide to the council or to members advice, assistance and interpretation in matters relating to differences, misunderstandings and alleged breaches of the code of ethics; and
- (d) authorize the issuing of letters of warning, correction, advice or admonition, with the objection of fore-stalling or preventing actions or practices which might lead to formal complaints ...

The informal investigations required may be carried out by A.P.E.O. staff, by individual Committee members or by the Committee as a whole. Occasionally, a consultant will be hired to inspect work alleged to have been performed improperly. The powers of the Committee or its delegates to investigate are severely constrained. The only express powers of inspection available to the Committee are those contained in S. 6(2) of The Building Code Act, 1974, which provides that:

"Drawings, plans and specifications accompanying applications for [building or demolition] permits shall be made available to the Association of Professional Engineers of the Province of Ontario and the Ontario Association of Architects upon request for the purpose of determining whether The Professional Engineers Act or The Architects Act is being contravened."

Under this section, A.P.E.O. officials sometimes examine plans filed in support of building permit applications where design complaints come to the A.P.E.O. attention.

The Practice and Ethics Committee frequently interviews the accused engineer although it has no express authority to require the engineer to attend or to answer questions. The accused engineer is invited to attend a Committee meeting to explain the circumstances surrounding the complaint. The engineer is advised that there is no obligation to attend but also (according to the Director of Legal and Professional Affairs) that failure to attend will mean that the Committee will resolve the matter without the engineer's assistance and that the failure to assist fellow engineers in resolving the matter "will not look good" before the Committee. Accused engineers must attend the meeting alone: they are not allowed to appear with counsel or agents. They are warned that anything they say may be used by the Committee in helping it to decide upon further action, but are told that no evidence unearthed during the meeting will itself be used against the accused in later proceedings. No formal transcripts are taken, but records are kept of the meeting. We were advised that frequently engineers are advised by their counsel not to attend the meetings in such circumstances. However, apparently, most engineers do choose to attend and the D.L.P.A. noted that frequently the engineer will consider the legal advice and the A.P.E.O. advice and decide to attend. The procedural fairness questions involved in such a procedure are obvious: they are considered more fully at Part G, section III below.

Even where a complaint alleges incompetence, the Practice and Ethics Committee has no power to conduct investigations of the engineer's performance in the current matter or the engineer's general competence (as demonstrated by the engineer's performance over a number of engagements). The D.L.P.A. told the author that the power to spot audit the competence of an engineer after a complaint was received would be very welcome. The D.L.P.A. referred to the power granted by the Quebec Professional Code to permit inspection generally, and felt that such a power would be a useful addition to the A.P.E.O. discipline system. As it is, the A.P.E.O. is largely limited to examination of the finished product and to inspecting plans under s. 6 of the Building Code, as means of establishing substandard design. The Committee also interviews complainants frequently at this preliminary investigative stage.

When the Practice and Ethics Committee has completed its investigation, it may adopt one of the following courses:

- (i) It may advise the parties that the complaint is outside A.P.E.O. jurisdiction; or
- (ii) it may advise the complainant that the complaint is not established or is not serious enough to warrant initiation of further or formal disciplinary proceedings by the A.P.E.O.; [In either of such cases, i.e., (i) or (ii), the complainant may choose to prefer a formal complaint on its own motion by swearing out a formal complaint to be laid before council and engaging counsel to prosecute the matter (s. 25 of the Act).]; or
- (iii) advise, warn, correct or admonish the accused engineer (or the complainant), either verbally or in writing; or
- (iv) it may make recommendation to council, including suggestions that special committees of inquiry be established to inquire into technical aspects outside of Committee competence;¹⁶¹ or

- (v) it may recommend that the D.L.P.A. make a formal complaint on behalf of the A.P.E.O. and that the Association's solicitors prosecute the action at a formal disciplinary hearing before council.

At present, there is no publicity given to the activity of the Practice and Ethics Committee in individual cases. The concern has been to retain confidentiality at this stage. The only notice to the profession of Committee disciplinary business is an occasional reference to frequently recurrent matters: for instance, a reference to the unusual number of "arena problems" before the Committee was made in one A.P.E.O. annual report. This publication policy is changing and the D.L.P.A. advised that the Association plans to publish in the Ontario Digest* the facts and dispositions of cases before the Committee. Publication will be in aid of an attempt to educate and deter other members and in furtherance of the Committee's goal of developing preventive techniques to complement its disciplinary function. The balancing of concerns of fairness to the engineer sanctioned by the Committee for minor transgressions in such cases will mean that the name of the engineer involved will not be published. The D.L.P.A. also advised of A.P.E.O. plans to produce a new manual of professional practice to be modelled after the Canadian Bar Association's Code of Professional Conduct. It would have a number of specific rules and commentary upon each of them, along with notes of facts and dispositions of cases decided by the Practice and Ethics Committee under each Rule. Apparently, work on such a manual is currently in progress.

* The Ontario Digest is a service provided by the A.P.E.O. It is an appendix inserted into Ontario editions of the commercially-published Engineering Digest, a professional journal. The loose-leaf supplement reports to A.P.E.O. members the activities of the A.P.E.O. and provides other information of professional interest to them.

The formal discipline procedure is initiated by a sworn complaint, usually the sworn complaint of the D.L.P.A. or another member of the A.P.E.O. staff. However, any member of the public can swear a complaint and commence formal proceedings so long as the complainant is prepared to incur the costs of prosecution. A formal complaint can be commenced in this manner even where the Practice and Ethics Committee has decided that the matter is outside A.P.E.O. jurisdiction or does not warrant formal disciplinary action. A small number of formal complaints have been laid by members of the public, although the D.L.P.A. has found that such persons are normally deterred from proceeding farther when advised that the Association will bear no share of the costs of prosecution (investigation, witness and counsel fees), which must therefore be borne by the complainant personally. It is not clear that the Act intended or has permitted this "right of private prosecution", particularly considering the provisions of s. 25(1)6 (reproduced in Appendix VI), which appear to contemplate prosecutions only by the Association. The A.P.E.O. is presently acting upon legal advice that it must permit complainants to lay charges and carry the matter to Council, but that council is entitled to make a preliminary decision not to proceed, after having allowed the complainant to outline the case. The formal procedure conforms generally with the principles enunciated in the McRuer Report: the relevant statutory provisions are reproduced in Appendix VI.

Where the Council, or its delegate committee, finds a member guilty of professional misconduct, it may choose from among a broad range of sanctions. Section 25(1) allows Council to:

1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register; or
2. Suspend the membership or licence of such person for such time as the council considers proper and direct that the re-instatement of such membership or licence on the termination of such suspension be subject to such conditions, if any, as the council considers proper; or
3. Direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the council considers proper and that at the end of such period and upon the compliance with such terms any penalty be remitted; or
4. Direct that the membership or licence of such person be cancelled and that the name of such person be removed from the register; or
5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case; or
6. Direct that, where it appears that the proceedings were unwarranted, such costs as to the council seem just be paid by the Association to the member or licensee whose conduct was the subject of such proceedings.

Council has resolved that as a general rule the facts of formal disciplinary matters and the names of the engineer involved should be published in the Ontario Digest in all cases in which professional misconduct has been established. In the past, names were not published, but pressure from the A.P.E.O. membership has reversed that policy so that now it is only in exceptional circumstances that a report of Council discipline will not name the engineer involved. To date, the A.P.E.O. has not issued news releases when a member is sanctioned in Council, but that policy is under review. There is no periodic report either to the profession or to the public of aggregate data on

discipline before Council: members of the profession are left to gauge disciplinary interest from the reports of the very few formal discipline matters that reach council annually. Neither is any cumulative report of matters before the Practice and Ethics Committee published either to the profession or to the public.

The final stage in the formal discipline procedure is appeal to the Courts, authorized by s. 26 of the Act. Any engineer who has been reprimanded or whose membership (or licence), is suspended or cancelled, may appeal to the Divisional Court, which is authorized to make such order as it considers proper or to refer the matter back to Council with directions.

Information about the activity of the informal investigation and discipline system is presented in Table XVI. Chart B of Table XVI describes the cases being held in the D.L.P.A.'s "miscellaneous file" (cases for which written complaints, or telephone complaints in respect of which the A.P.E.O. was prepared to act, were received, but further information required was not received, or the matter was screened out of further discipline), for the two-year period preceding August, 1977. Chart A of Table XVI describes matters that were laid before the Practice and Ethics Committee during the two-year period preceding August, 1977, while Chart C of Table XVI carries the information on Charts A and B of Table XVI forward for the period between August, 1977 and March, 1978.

Table XVII describes the workload of the A.P.E.O.'s formal discipline procedure for the period January, 1970 through March, 1978. Chart A of Table XVII gives a complete statistical breakdown of inputs and outputs from January, 1970 through July, 1976, while Chart B of Table XVII gives

greater detail on the eight cases that involved allegations of incompetence to any substantial degree during that period. Chart C of Table XVII was provided to the author recently by the A.P.E.O. It describes the full workload (competence and other matters), of the A.P.E.O. formal disciplinary procedure during the period August 1976 through March, 1978 (updating Chart A and Chart B of Table XVII).

TABLE XVI - ANALYSIS

The cases described in Table XVI are not a complete guide to analysis of complaints received by the A.P.E.O., since there is no record of telephone complaints summarily screened out by A.P.E.O. staff. Of the 104 cases considered by the staff and the Practice and Ethics Committee, approximately 33 cases (about one-third), involved allegations of incompetence. It is extremely difficult to distinguish among various categories of competence complaints, but the breakdown in Table XVIII is suggested as a rough guide. The total number of cases in the breakdown is greater than 33 because most complaints involved allegations relating to several of the categories below.

Of the 18 design complaints, 2 were established, 7 are pending and 9 were not established. Of the 17 negligent supervision complaints, 3 were established while 5 are pending and 9 were not made out. Of the 12 beyond competence cases, 1 was established, 5 are pending and 6 were not established. And of the 11 "disregard of public interest" cases, 3 were established, 5 are pending and 3 were not established.

The Practice and Ethics Committee recommended that formal charges of professional misconduct be laid in 6 of these competence cases: council convicted the accused engineer of gross negligence and improper misconduct, though not of incompetence, in one case and ordered a two year suspension with name publication (case 11); the other 5 cases are pending before Council for formal hearings. In 5 other cases, the Committee wrote letters advising or admonishing the engineers involved about their professional responsibilities and warning against similar misconduct in the future, or admonishing them. In the other cases, the matter remains pending, or was not established.

The sources of complaints are presented in Table XIX.

Reports by other engineers are usually received in situations in which a second engineer is engaged by a client after defects arising out of a prior engineer's services become apparent. In some cases, "in-house" engineers of clients reported deficiencies. The responsibility of engineers to report incompetent performance of other engineers is found only in s. 6(a) of the Code, which requires engineers to:

"maintain the honour and integrity of [the] profession and without fear or favour expose before the proper tribunals unprofessional or dishonest conduct by any other members of the profession ..."

The Director of Legal and Professional Affairs reported to the author a reluctance on the part of engineers to report other engineers to the Association.

It is very difficult to ascertain much about demographics of accused engineers from Table XVII. In the vast majority of competence complaint cases, no information is available about firm size of firm of accused engineer, age, experience, rural-urban distribution, etc. Of the small number of instances in which firm size is indicated the engineers involved are in sole practice or are engaged with small firms (up to 5-6 engineers, and up to 25 persons in total in the office), or medium-size firms (up to about 50 persons in total with an engineer to other personnel ratio of about 1 to 3 or 1 to 4). No competence complaints appear (among those few cases where size is known), against large (100 total personnel), or "giant" (200-500 total personnel), firms. These very limited figures suggest what is confirmed by the D.L.P.A.'s subjective impressions reported to the author: that it is universally the smaller firms and sole practitioners whose competence is impugned in complaints to the A.P.E.O. The D.L.P.A. suggested that larger firms have counterchecks in

their greater numbers: a greater number of persons are involved in projects in the larger firms, and errors committed by one person can be noticed and corrected by another. He also noted that the smaller firms are often "squeezed" by developer clients in subdivisions who attempt to get engineering services at cut-rate prices. The D.L.P.A. also noted a trend towards more problems in smaller centres where engineers are expected to be more generalist and occasionally find themselves undertaking matters beyond their competence. This trend was also noted among "moonlighters", who sometimes find themselves involved in matters they are not competent to undertake.

The D.L.P.A. attributed the very limited number of client complaints to the largely employee status of engineers and to the nature of the clientele of non-employed engineers. Governments are the largest users of non-employee engineering services and engineers have very few individuals as clients. The D.L.P.A. felt that most engineering clients are sophisticated and are able to judge the quality of engineering services provided to them. Only about 50% of practising engineers felt that clients would be able to judge quality differences among providers of engineering services: highway engineers noted the increased difficulty they faced when dealing with smaller clients, such as small municipalities, who do not have their own in-house engineering departments.¹⁶²

The unlikelihood of client complaints is further confirmed by the Architecture and Engineering Client Survey that was undertaken by the P.O.C. Although a significant number of clients, and particularly government, non-profit institutional and private sector non-residential clients, had encountered "major problems in their past involvement in building design", no client in the sample

complained to the A.P.E.O. (or O.A.A.), as a means of resolving the dispute, preferring negotiation, termination of future relations or litigation instead.¹⁶³

Table XVI confirms that the A.P.E.O. staff and Practice and Ethics Committee do take jurisdiction over a wide variety of alleged instances of incompetence. The cases include instances of alleged lack of skills and knowledge as well as of negligent, careless or reckless application of skills and knowledge by those possessed of them. All findings appear to be tied to the complaint which started the proceeding: there does not appear to be any case in which investigation of a single incident produced evidence of incompetence generally which led to discipline in respect of the more general failing.

TABLE XVII ANALYSIS:

Table XVII indicates that 8 matters raising competence issues directly, have come before A.P.E.O. council since January, 1970. In two cases, the accused engineer was acquitted, while in the remaining 6 cases convictions were registered and sanctions imposed. The range of sanctions imposed is wide, varying from formal reprimands, through suspended sentence should the accused satisfy an examination board of competence within a specified period, through suspension with re-education requirements to be satisfied for lifting of the suspension, through cancellation of membership.¹⁶⁴ It appears that in only one case was publication of the accused's name ordered (case 8), but many of the competence cases (cases 1-7), arose and were disposed of finally before adoption of the A.P.E.O. policy change to general reporting of

names of persons sanctioned in council. The most recent competence case (case 8), involved publication, and although none of the very recent matters (cases 9-15), involved competence, the shift in policy is apparent: in all cases in which the charge was established, publication was ordered.

The reports of the decisions in Chart B suggest that the A.P.E.O. is careful in distinguishing between cases in which the accused lacks requisite skills and knowledge ("incompetence"), and cases in which, despite having the skills, the engineer failed to apply them properly ("gross negligence" - "improper conduct"). A re-education requirement appears to be imposed where the accused can be expected to be engaged again in the field of practice in which difficulty was encountered: where the accused has been practising outside the normal field of the accused's practice, a reprimand (case 4), or a suspension with re-admission conditional on satisfactory proof of understanding of professional responsibilities (case 7), will be ordered.

The D.L.P.A. noted that proof of appropriate standards is not usually difficult in competence cases. The Engineering Institute of Canada prepares technical standards while various building codes prescribe others. In some cases, the results alone are indicative of incompetent work: a culvert or dam collapses, or plans submitted in support of a building permit application are rejected. The D.L.P.A. noted that standards are rarely in issue: usually there has been a gross departure from what could have been expected, and the question is simply reduced to whether or not the engineer or some other party (another engineer, an architect, the contractor), was the party

responsible. In such cases, evidence is led to establish what the appropriate role is for various members of the construction team. The A.P.E.O. used to publish "Performance Standards", which indicated in general terms the tasks that engineers could be expected to undertake in particular cases. The standards were expressed too broadly ("to provide cost estimates, to design", etc.), to be of any use at disciplinary hearings: in any event, the A.P.E.O. received legal advice that requiring compliance with the standards, which were connected to a fee schedule, could place the A.P.E.O. in violation of the Combines Investigation Act, and the standards are no longer published or applied. At best, they were a guide to clients of what services could be expected to be performed for payment of (about) the fee schedule charge.

The A.P.E.O. has no express power to suspend or expel a member who has become incompetent by reason of mental, physical, drug or alcoholic problems. The Association must await demonstrated incompetence quite apart from the cause, and prosecute for the professional misconduct shown. We were told that the A.P.E.O. has drafted legislation which would give it the power possessed by other professional organizations to suspend a member after inquiry reveals incapacity arising from one of these grounds. There is no question but that the Association should have such power. However, the D.L.P.A. indicated that the problem has never presented itself acutely. Normally, the market operates and engineers who suffer from such difficulties are unable to find employment. The A.P.E.O. is normally contacted by such persons who seek assistance in becoming employed, rather than about them in connection with a complaint that they be removed from the profession.

V. A.P.E.O. DISCIPLINE: GENERAL ANALYSIS

The discipline system of the A.P.E.O. has shown itself capable of responding to various problems of incompetence presented to it. It has exercised its clear authority over incompetence, however displayed, and has deployed all of the wide range of sanctions expressly available to it. The system appears to perform significant dispute resolution functions. The administrators of the system have begun to act to remove some of the minor problems that limit its general utility (e.g. to promote greater publication of the facts, dispositions and names of engineers involved in matters before council). The difficulty of establishing suitable standards against which to measure competence has not been inordinate, and discipline appears to be capable of being a useful tool in the A.P.E.O.'s attempts to ensure competence in practising engineers. The D.L.P.A. indicated that more complaints are being received now and that he is "pushing for more emphasis on discipline".

Nevertheless, two major factors combine to limit the efficacy of discipline in promoting competence in engineers generally: (i) The A.P.E.O. obtains relatively few inputs into its discipline system annually and successfully prosecutes just over one formal discipline matter each year. Since only formal discipline matters are reported to members (and then only recently), the deterrent effect of present A.P.E.O. discipline can be seriously doubted. The proposal to publish a manual of practice and to publish (anonymously) the facts of cases before the Practice and Ethics Committee can be expected to reinforce the deterrent effect of A.P.E.O. discipline, when implemented; and (ii) The A.P.E.O. has virtually no practice-inspection powers. This deficiency disables the association from using current complaints as a stimulus to general investigation of the competence of practitioners complained against and disables the A.P.E.O. from undertaking any

practice-inspection program of particular categories of engineers which the complaints-received record has indicated to be high-risk groups. This deficiency may be particularly unfortunate in the engineering profession, where the complaints received might well be an accurate reflection of the competence problems in the profession. More sophisticated clients who employ in-house professionals can use the market to discipline the large firms which serve them: the competence of such firms is guaranteed further by internal quality control devices. The complaints received by the A.P.E.O. relate mostly to smaller firms who serve the sorts of smaller clients who are most likely to complain. But in the context of engineering services, even smaller clients are likely to be sophisticated enough that their complaints should not be dismissed lightly. The ability to make full use of their complaints and to conduct a thorough review of the practices of engineers complained against, could be highly conducive to the promotion of competence.

The A.P.E.O. does not advertise its complaints-receiving function but it is unlikely that advertisements would produce significantly more complaints: the generally sophisticated clients who use engineering services are likely to be aware of the A.P.E.O. but do not complain because they employ other techniques to resolve perceived inadequacies.¹⁶⁵ The A.P.E.O. does not receive information from the insurers of engineers about civil claims received. The Association is sometimes informed generally about recurrent problems and the insurers have published loss-control bulletins. However, A.P.E.O. officials expressed surprise when informed by the author of the possibility of using insurance claims as a source of inputs. The officials said that they

would consult with the insurers about the matter: however, if the experience in other professions is a guide, the A.P.E.O. may have difficulty in arranging for instances of possible civil liability that come to the attention of the insurer to be reported systematically to the A.P.E.O.

From time to time, coroners report to the Association situations of which they become aware which suggest incompetent engineering. A more strenuous attempt by the Association to formalize such relationships and to create similar liaisons with other well-placed observers might be useful. Various government departments and agencies occasionally report matters that come to their attention: attempts could be made to encourage a greater frequency of reporting by such officials. Similarly, a greater emphasis on reporting by engineers of instances of perceived incompetence of other engineers could be productive of more inputs. The frequency with which engineers come into contact with each other in the course of practising their profession suggests that this source could be fruitful. Express duties to report, or the creation of schemes providing economic incentives to report could assist in promoting more frequent reporting. ¹⁶⁶

Similarly, increased reporting of A.P.E.O. interest in detecting and counteracting professional incompetence might heighten the profile of A.P.E.O. discipline and produce more inputs from all of these sources. The proposal to publish Practice and Ethics Committee proceedings, which are the proceedings in which the vast majority of discipline matters are finally resolved, is a move in this

direction. Another useful innovation has begun as a result of P.O.C. interest in discipline. The Director of Legal and Professional Affairs has now begun to record all matters considered by the staff and by the Practice and Ethics Committee, in a form similar to that in which Tables XVI and XVII were presented. Annual publication of such a Table of activity could stimulate the required additional inputs to increase the deterrent abilities of the A.P.E.O. disciplinary mechanism.

The A.P.E.O. discipline system has very limited lay representation. However it is not certain that increased representation would produce increased effectiveness: very few unsophisticated persons employ or complain about engineers. Any fears that the preliminary stages of the system might screen out legitimate complaints are assuaged by recalling the ability of lay complainants to initiate formal proceedings by by-passing the preliminary stages, and, in any event there is no evidence that such fears are justified. It should be remembered that the A.P.E.O. systematically declines jurisdiction only over purely fees matters, and even then, only (apparently) when the matter involves no element of a "quality of service" complaint.

It is difficult to assess the significance of the A.P.E.O.'s inability to investigate beyond the limited range described above. The utility of powers to investigate competence generally is demonstrated clearly in the I.C.A.O. discipline system, and is admitted by the D.L.P.A. The present number of inputs into the A.P.E.O. system could permit detailed investigation of the practices of members complained against. Even though the means suggested above

to produce a larger number of inputs would increase the workload of such a practice-inspection system, it appears that the increased effort would not be misplaced. Most of the present and projected sources of inputs are sophisticated enough that complaints originating from them could normally be assumed to have some degree of validity, and investigation of the practices of members complained against in such circumstances could be expected to be fruitful in terms of uncovering incompetence. Several cases in Table XVI illustrate the difficulty in the opposite position. A complaint from a knowledgeable party suggests incompetence, but limited investigation clears the member of incompetence in the particular case. Even in cases where the investigation has left the A.P.E.O. in doubt, it can go no farther towards evaluating the competence of the accused engineer generally.

PART G - DISCIPLINE IN THE ARCHITECTURAL PROFESSION

I. SOURCES OF INFORMATION

The information presented in this Part was obtained from the following sources: Appendix C of the Research Directorate's Staff Study, "The History and Organization of the Architectural Profession";* other bibliographic sources listed in the bibliography at the end of this paper; interviews with executive members of the Ontario Association of Architects (O.A.A.) by the researchers; data obtained with the assistance of the Executive Director of the O.A.A. concerning the disposition of individual cases by the Professional Conduct Committee (P.C.C.) of the O.A.A. (Table XX) and the Architecture Engineering Client Survey and notes from the Architecture firm interviews prepared for the Professional Organizations Committee.

II. OUTLINE OF O.A.A. DISCIPLINE SYSTEM

The legislative framework for the operation of the O.A.A. discipline system is established by: The Architects Act; Regulations of the Registration Board, made under the Act; and by General By-laws of the O.A.A. The matter is somewhat complicated by the existence of a draft proposed new Architects Act and Regulations which, if enacted, would have the effect of changing the institutional and procedural framework significantly. (The effects of the new legislation and regulations are discussed below.)

The present Act establishes the O.A.A. Council and Registration Board, and enables the Board to make Regulations providing for the discipline of members and for the investigation of complaints against members (Sections 10(1)(f) and 10(2), set out in full along with the other relevant legislative material in Appendix VI).

*Referred to below as "History and Organization of the Architectural Profession."

The Act establishes a duty on each member of Council to bring before Council "all complaints of misconduct or incompetence on the part of any member of the Association that may be brought to his attention", and on Council to bring before the Board all cases "that in its opinion should be dealt with by the Board".¹⁶⁷

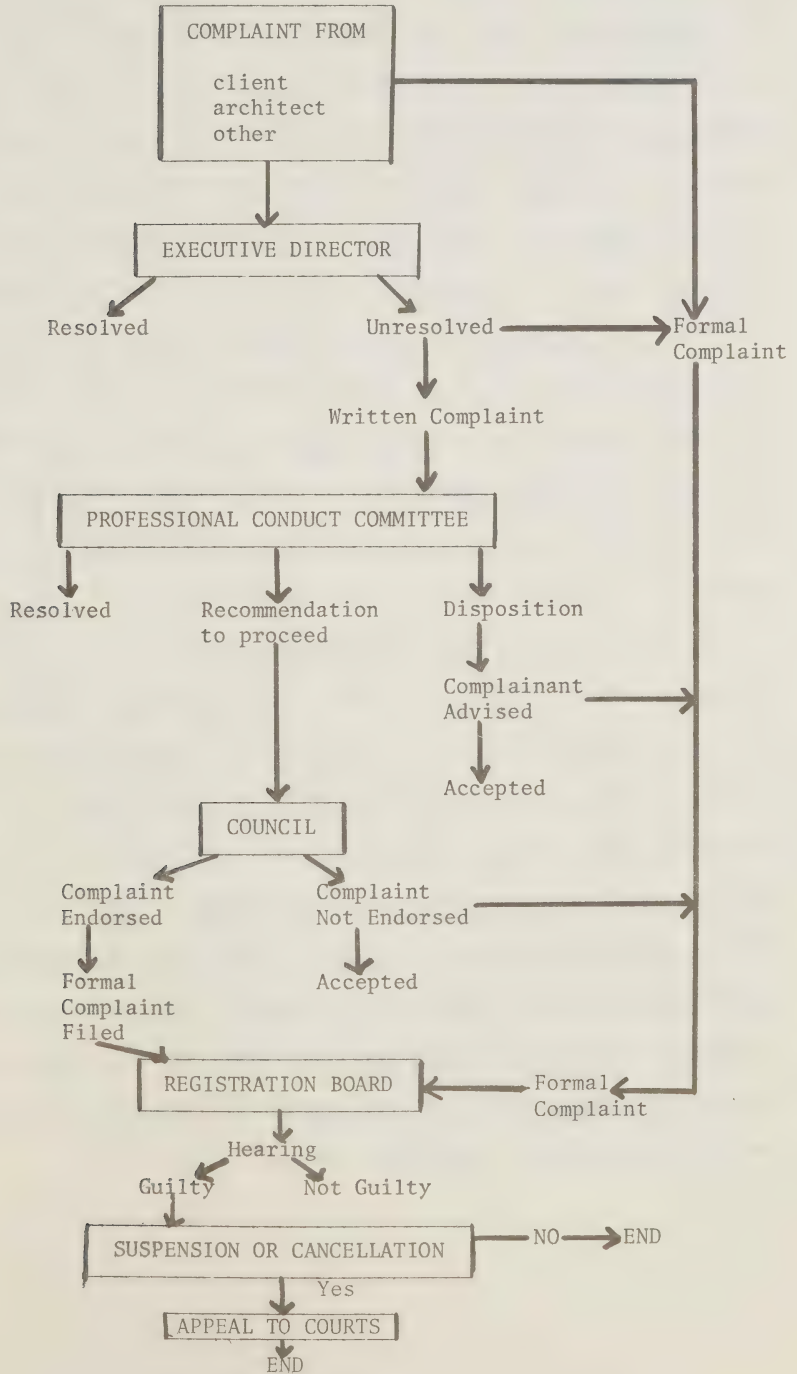
The General By-laws of the O.A.A. authorize the appointment by Council of standing and special committees, and the delegation of jurisdiction and responsibilities to such committees: it is under this power that Council's Professional Conduct Committee is appointed. The Regulations contain 36 sections under headings of "Professional Conduct" and "Complaints". Sections 34 through 60 (Professional Conduct) comprise, in effect, a Code of Professional Conduct, proscribing certain conduct (assisting attempts to evade the Act, engaging in activities that will conflict with professional duties owed clients), and encouraging other practices (truthful representations to clients of qualifications and capabilities, retaining confidences, performing professional duties with reasonable skill and good judgment"). Sections 61 through 69 (Complaints), outline the jurisdiction and procedure of the Registration Board in the "formal discipline" system.

The bodies involved in O.A.A. discipline include the administrative staff, the Professional Conduct Committee, Council, the Registration Board, and ultimately the Courts. The entire discipline procedure is illustrated graphically in Figure XI.

The Executive Director of the O.A.A., himself and alone, is the only "administrative staff" involved in the complaints process (he is also the prime investigator in enforcement matters as well, although

FIGURE XI

O.A.A. DISCIPLINE PROCEDURE



occasionally, outside private investigators are hired in enforcement matters). When complaints are received by telephone or letter at the O.A.A., the case is passed to the Executive Director. The details of the complaint are noted, and frequently it is found that the matter is outside the jurisdiction of the O.A.A. because the accused is not a member (in which case the Executive-Director may proceed as on an enforcement matter). It is often possible for the Executive-Director to resolve matters informally at this stage, since many complaints (particularly clients' complaints), stem from a lack of communication between architect and client. The Executive Director can provide the client with information or can act as an informal arbitrator to resolve problems at this early stage. The Executive Director estimated that "perhaps one out of ten" telephone complainants are helped over the phone: an informal call by the Executive Director to the architect involved can provide the required dispute resolution service.

If the complaint cannot be resolved easily or if it is serious enough to warrant further investigation, the Executive Director requests that the complainant reduce the complaint to writing addressed to the O.A.A. Writing is not required by any O.A.A. rule, and the requirement is waived where the matter seems serious: Chart D of Table XX shows a number of cases in which the matter was carried to the Professional Conduct Committee despite the absence of any written complaint. Where telephoned or written complaints are resolved by the Executive Director or where jurisdiction is declined, no formal record is kept. The Executive Director has a personal notebook in which he notes matters he resolves without their being sent to the P.C.C.

When a written complaint is received, the Executive-Director (E. D.) informs the architect involved of the outline of the complaint, and invites a reply. Regulation 46 obliges members to answer such O.A.A. requests. The identity of the complainant is normally not revealed to the accused architect at this stage, nor indeed at the Professional Conduct Committee stage. The identity is disclosed once a determination has been made to prosecute the matter as a formal complaint: the complainant will usually be needed as a witness at this stage. The E. D. noted that the identity of complaining members was not revealed, "because the O.A.A. requires members to report incompetence and misconduct ... members should act as policemen and shouldn't have to be named ... they aren't really complainants". However the E. D. did note as well that the identity of client complainants is usually easily ascertainable by the accused architect from the circumstances of the allegation.

Once a reply is received, the allegation and reply are laid before the Professional Conduct Committee. The P.C.C., a standing committee of Council, is composed of ten members: nine voting members, and ex officio, one member of the Registration Board. The Board member does not vote but observes P.C.C. activity so that it can be reported to the Registration Board. Reports of the liaison member are considered by the Registration Board and occasionally the Board will issue a bulletin to inform members of problems that have arisen at the P.C.C. level and of means of avoiding their recurrence. The annual reports of the O.A.A. also draw on the experience of the liaison member to

report sensitive areas of practice to O.A.A. members. The other P.C.C. members are chosen to be representative of the diverse types of architectural practice: they are a mixture of young, old, government, salaried, in and out of Toronto, large and small firm, partner and employee architects. An effort is also made to include on the P.C.C. one or two members who have served recently on the Registration Board, in an attempt to draw on their experience in that capacity.

III. JURISDICTION

The terms of reference of the P.C.C. are as follows:

1. To consider matters presented by members and the public relating to alleged unprofessional conduct of members.
2. To assist the Council in carrying out its duties pursuant to Section 13 of The Architects Act and to investigate and report to Council on all matters of misconduct and incompetency which may be brought before the Committee.
3. When a report of a question of a member's conduct comes before the Professional Conduct Committee, then such member shall be informed in writing and shall have the right to appear before the Committee before a formal complaint is prepared.
4. Where it appears that a clear breach of the Regulations has been committed by a member, documentation of such matter shall be forwarded to Council.

The P.C.C. operates under no other formal guidelines: its jurisdiction is declared in neither the Act nor the Regulations: it is constituted only under a general by-law of the Association, which permits the appointment of such committees as Council sees fit.¹⁶⁸ The P.C.C. does not systematically decline jurisdiction over any category of complaints against architects, so long as the complaint can be brought within its terms of reference: Chart D of Table XX (Matters before P.C.C.), indicates that even complaints alleging no more than that an architect's fees are too high can be considered by the P.C.C.

Once a preliminary determination of jurisdiction has been made, the P.C.C. examines the substance of the complaint and reply, as well as the previous complaints history against the accused architect (provided from O.A.A. records by the E. D.) The P.C.C.'s function is largely a preliminary fact-finding one: the Committee acts as a screening agency to investigate and to recommend to Council whether or not the complaint should be prosecuted further. The P.C.C. might decide at this early stage to advise the complainant that unless the complainant can produce more evidence, the complaint will be regarded as not established. Occasionally the P.C.C. will interview the complainant at this point. The P.C.C. might write to the O.A.A. member requesting further information. Or it might invite the member to attend the next P.C.C. meeting. There is no formal authority for such invitations and no requirement that members attend when invited. In an attempt to keep the inquiry informal, the P.C.C. insists that if a member does attend, the member attend alone: counsel or agents are prohibited. The E. D. of the O.A.A. advised that in all cases, the architects accused do attend, though occasionally they refuse to answer questions. The architects accused are advised that answers they volunteer might be used against them in later proceedings. The due process issues that arise in such proceedings are the same as those mentioned in the report on A.P.E.O. discipline.¹⁶⁹

The power of the P.C.C. to investigate beyond the written material and voluntary interviews, is limited. Under s. 6(2) of The Building Code Act, 1974, the Committee is entitled to inspect drawings, plans and specifications submitted to building department officials in support of building permit applications.¹⁷⁰ On occasion, the P.C.C. or its delegate will attend on-site to investigate the quality of work performed where the standard of the architectural services rendered is impugned. However, the Committee has no authority to compel the accused architect to answer questions or produce documents relevant to the instant complaint. A fortiori there is no power to investigate a member's competence generally as revealed by inspection of the performance of the member on a number of prior engagements. The O.A.A. was asked whether it ever conducts "spot audits" of the general competence of members charged with incompetent performance in an individual case. The E. D. of the O.A.A. stated that the O.A.A. has never really had an allegation of incompetence presented to it: he felt that the P.C.C. would attempt to "spot audit" competence in such a case even though it lacked any right to do so. He felt that authority to spot audit competence would be a very useful power for the P.C.C. to have. It is possible that although the P.C.C. does not have such powers at present, the Registration Board does. Section 17 of the Act grants to the Board, "in the investigation of a complaint against a member ... all the powers that may be conferred on a commissioner under the Public Inquiries Act". Such powers include the power to subpoena witnesses and order production of documents. However, as long

as the P.C.C. remains the initial investigatory body, s. 17 is not helpful. Similar powers could be conferred on the P.C.C. by regulations enacted under s. 10(2)(a) of the Act, which permits the Board to make regulations (subject to Cabinet approval) "providing for the investigation of any complaint that a member of the Association has been guilty of misconduct or incompetence ...". To date, however, no such regulations have been enacted, and the P.C.C. conducts its activities only under the authority of the terms of reference described above.

Once the P.C.C. has concluded its fact-finding investigation, it must decide whether or not it should recommend to Council that formal disciplinary proceedings be prosecuted by the O.A.A. The jurisdiction of the O.A.A. in formal discipline proceedings is ultimately exercised by the Registration Board, which is authorized to "suspend or cancel the membership of any member ... whom it finds guilty of misconduct or incompetence such as to render it desirable in the public interest that he should be so dealt with" (S. 10(2)(b), Reg. 61). No greater specificity is provided to these terms than that ascertainable from Regulations 34-60 (Professional Conduct). As described below, proposed amendments would define O.A.A. jurisdiction far more clearly.

Once the P.C.C. has considered the complaint and the appropriate jurisdiction of formal discipline, it makes its recommendation. Most cases before the Committee are not pursued as the complaints relate to conduct not within the regulations or to regulations, breach

of which is not considered serious enough to warrant a full hearing. The majority of complaints at this stage come from members and unless very serious are not pursued. However, those from clients are taken more seriously, and are investigated in much greater detail.

In an interview with Steven Wilson, the E. D. confirmed that strenuous attempts are made to resolve complaints at the P.C.C. level..

If the P.C.C. decides that the member is at fault but not in breach of the Regulations, or that the case should not go forward, it will advise and counsel the architect on methods of improving practice and avoiding similar difficulties in future. The P.C.C. has no express legal authority to counsel or advise members, and does so only informally. A fortiori it has no authority to reprimand members, although the E. D. of the O.A.A. stated that he thought this would be a useful power for the P.C.C. to possess. There is no publication of matters before the P.C.C. except where the Registration Board comments to the members generally on recurrent P.C.C. problems reported to the Board by its liaison member on the P.C.C.

If the P.C.C. decides that the matter should go no further, it informs the complainant, as well as the accused architect and provides both parties with written and detailed reasons for its conclusion. Although the Regulations enable any member of the public to by-pass the P.C.C. and Council and to lay a formal complaint before the Registration Board, the P.C.C. does not inform complainants of this right unless the complainant specifically asks for such information.

If the P.C.C. concludes that formal discipline is warranted, it informs Council of its recommendation. It is then up to Council to lay the matter before the Registration Board by filing a sworn complaint with the Board's secretary as provided by Regulations 62 and 63.

The P.C.C. usually meets once each month. Meetings normally last for about one half day each, though occasionally a meeting will take all day. Over the last few years, the Committee has met 12-13 times annually.

Once Council is informed of a P.C.C. determination that formal discipline should ensue, it considers the recommendation. However, the recommendation is normally accepted and a complaint under oath is sworn (normally by the Secretary to the Board, who is the Executive Director). The matter is then formally before the Registration Board which is responsible for its further carriage. Complaints under oath can be sworn by any person, and where a complaint setting forth alleged misconduct or incompetence and giving reasonable particulars has been made under oath and filed with the Secretary, the Board must be convened within 7 days thereafter to consider and act upon the complaint. The E. D. noted that one such complaint (apparently drafted by a complainant's lawyer) had been received by the Board Secretary's Office, but that it was withdrawn when the complainant was informed that he would have to prosecute the matter himself (without O.A.A. intervention) and at his own expense. It is not clear if the Board could hold a preliminary hearing to decline to act generally, in the manner in which the A.P.E.O.'s legal advice suggests council can act.

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Formal discipline proceedings involve a hearing pursuant to the requirements of The Statutory Powers Procedure Act. At the conclusion of the hearing, the Board may find the member not guilty. If however, the charge is established, the only sanctions expressly available to the Board are suspension or cancellation of membership (Regulation 61). Although s. 10(2)(c) of the Act permits the Board to pass regulations to allow conditional cancellations of membership, no Regulation has been made in pursuance of that power. In practice, the Board has imposed informal reprimands in some cases, rather than suspensions or cancellation. The informal reprimand sanction developed in cases in which members pleaded guilty and requested reprimands rather than more severe sanctions. The authority of the Board to sanction by informal reprimand has never been tested judicially.

Where a member is convicted in formal discipline, the facts of the case, reasons for judgment, disposition and name of convicted architect are always (as a matter of policy) circulated by official memos from the O.A.A. to all members "as a means of continuing education". There is no publication of cases in which a "not guilty" result is reached. The Board can order such publication as it sees fit, and "where it is in the public interest", a press release is prepared and distributed. The E. D. indicated that he has been trying to get the Board to be explicit in its reasons so that the maximum educational value can be achieved. A sample memorandum to the membership is reproduced in Appendix VII. ¹⁷²

The question of what standards should be applied in formal discipline hearings has never arisen. The present E.D. of the O.A.A. stated that, in his more than 10 years' experience with the O.A.A., there had

never been a hearing on a formal complaint impugning the competence of a member. In one case a charge of incompetence was laid where the accused suffered from severe physical and alcoholic problems. However, he had recovered by the time the formal hearing began, and charges were relaid in respect of the accused's having stamped drawings he had not prepared: a conviction was registered and the member was expelled. Only two months ago, a sworn complaint was received alleging incompetence in a case in which the architect had failed to procure a building permit and to undertake other basic duties: apparently, the matter will be "settled" and is not to proceed. The only "standards" available now are those of the R.A.I.C. and of various building codes. However the O.A.A. has been active in compiling a manual entitled "Outline of Service".. The manual is a handbook of practice and when completed will set standards of performance for "all phases of practice". An associate of a large firm was retained as editor and with assistance from the O.A.A., and from standards available in the United States and through the Royal Institute of British Architects, exposure drafts (10 to 15 per standard) were written and circulated to all relevant experts. Currently, 30, of the 35 standards to be developed, are complete. The manual has already sold 1,000 copies (there are only about 3,500 non-Quebec architects in Canada). Although there has been no precedent, the O.A.A. expects that standards developed from this manual would permit findings of incompetence.

The Registration Board meets once monthly and generally for one full day per meeting. However, discipline hearings can go on for two or three days, creating hardship on the volunteer Board members, and particularly on the non-Toronto members. The average cost of "discipline" annually to the O.A.A. is about \$15,000. This figure includes legal fees, room rentals, P.C.C. meals and expenses and the like. Actual figures are:

1975	\$ 13,179.
1976	\$ 34,781.
1977	\$ 14,465.
1978 (budget)	\$ 15,000.

The unusually high 1976 expenditure reflects the cost of the Tampold and Wells case, which was unsuccessfully appealed to the Courts by the members involved. The Board does not have power to assess costs against architects it convicts. The cost of discipline is similar to that of enforcement of the Act (1978 budget on enforcement, \$15,000) and amounts to approximately \$ 9.00 per member (based on 1,650 members). There is no lay participation at any stage of disciplinary proceedings.

Where an architect's membership has been cancelled or suspended, the architect can appeal to the Courts in accordance with s. 19 of the Act; the Court is free to vary the order of the Board and to impose such orders as it considers just.

IV. DISCIPLINE BY THE O.A.A.

Information about the workload of the P.C.C. for the period November, 1974, through April, 1977, is presented in Charts A, B, C and D of Table XX.¹⁷³ Some of the information from which Table XX was constructed was provided to the P.O.C. by the O.A.A.;

further and more detailed data was obtained by a review of P.C.C. files by Steven Wilson with the assistance of the Executive Director of the O.A.A. Table XXI presents information about formal disciplinary proceedings before the Registration Board for the period 1971 through October 1977.

TABLE XX - ANALYSIS

The complaints reported in Chart D of Table XX show a very limited role played by the P.C.C. in competence matters. No complaint during the 2 1/2 year period raised for the P.C.C.'s consideration the question of the general competence of any architect. Four, and possibly five complaints reported during the period raised questions about the adequacy of the architect's performance on a particular engagement. In each of these cases (cases numbers 41, 49, 53 and 54, and possibly 43), the accused was a sole practitioner. In three cases, clients reported the complaint while in one, a building department official complained about the inadequacy of plans, and in the other (doubtful), case, the matter was reported by another architect (case 43 can be regarded as raising a competence issue if it is seen as one in which the bid was unreasonably low because the accused architect did not appreciate what service would be needed, or if it raises a concern about the corner-cutting that would be necessary to make the job profitable at the tender price, in which case, it could be dealt with as an instance of reckless disregard for public or clients' interests). In three of these cases, the P.C.C. conducted an informal investigation of the matter, and in two of these three instances, the accused was acquitted. In the third case he was "required to retract his (unduly

low), bid and submit a proper one". In the other two cases, representatives of the P.C.C. conducted on-location investigations, in one case (41) visiting the construction site, and in the other (49), inspecting drawings submitted to a building department. The accused was counselled in the first case, while in the second, no action was taken even though the drawings were found to have been inadequate. It does not appear that the accused was even contacted in this latter case. In none of the four or five cases was any general investigation of the competence of the accused architect undertaken in consequence of the single complaint registered.

A small number of cases involved fee and other contractual disputes. The consideration of such disputes by the P.C.C. confirms that there is no systematic screening performed by the E. D. In two of the fees matters (13 and 16), the P.C.C. advised the complaining client that the fees appeared to be appropriate. In the third, the P.C.C. appears to have played a dispute resolution role in recommending that the fees be reduced (case 17). Although there seems to have been an element of quality deficiency in each of the fees complaints, that deficiency was not regarded as serious enough to prompt further action by the P.C.C. on the matter. In the contract dispute cases (51, 53 and 54 - 53 and 54 were also considered to be competence cases, above), the P.C.C. investigated but felt no further action was warranted. One case (53), was investigated even though civil litigation was pending and despite P.C.C. fear of being drawn into the litigation. The E. D. of the O.A.A. stated that he had noticed a trend by some clients to use O.A.A. discipline "as a lever"

in civil proceedings, and that the P.C.C. is conscious of and careful about its involvement in such cases, and the possibility of its members being called to testify in civil proceedings. However, the P.C.C. has received counsel's opinion that there is no need to await the termination of civil proceedings, and as case 53 indicates, the P.C.C. will become involved at an earlier stage in appropriate cases.

Despite its apparent willingness to consider complaints of any sort, very few competence-related matters are reported to the P.C.C. The vast majority of complaints (21 of 59 complaints for which details are available), involved breaches of ethical rules prohibiting conflicts of interest, unfair competition against other architects, discourtesy and the like. Thirteen complaints involved breaches of Regulation 35 (which prohibits architects from assisting others to breach the architectural monopoly). Of the remaining cases, 5 involved breaches of advertising rules, 4 the stamping of drawings not prepared by the accused, and 4 the passing off of another's work as that of the architect. Six cases raised issues either not related to the architect's profession or which could not be classified because they were too vague.

It is noteworthy that the fees and contracts complaints and the majority of competence-related complaints originated from clients. This fact is the more significant once Charts A, B and C of Table XX are examined. These charts show that during the 2 1/2 year period considered, only 8 of 64 complaints originated with clients, while 48 of the complainants were other architects: 8 complaints were received from other and less usual sources, (Some of these complaints were originated by O.A.A. Council or Registration Board members or with O.A.A. Staff). These figures, taken

together with the analysis of Chart D (above), suggest that architects do not complain about the incompetence of other architects. When professionals complain, their complaints relate almost exclusively to ethical and enforcement matters. As clients complain infrequently, very few competence inputs are received by the O.A.A. discipline system.

TABLE XXI - ANALYSIS

No competence-related complaint appears among the eleven matters considered by the formal discipline procedure of the Registration Board during the period 1971-77. Seven of the eleven cases involved breaches of Regulation 35 (assisting non-members to practice architecture), the other cases involved ethical breaches (improper acceptance of commissions, sealing documents prepared by others, passing off others' work as that of the accused architect). The penalties imposed included cancellations and suspensions of membership, reprimands, or no more than a mere finding of guilt by the Registration Board.

The absence of competence complaints in the formal procedure is the expected consequence of a limited number of competence inputs to the P.C.C., the lack of general investigative authority, and the strong dispute resolution orientation of the P.C.C. and O.A.A. administrative staff. The data confirm the Executive Director's impression that there have been no competence complaints before the Registration Board during his longer than ten-year tenure with the O.A.A.

For the past several years, the O.A.A. has been requesting amendments to its governing Act and to the regulations made under it. While the changes requested do not relate solely to discipline, the new legislation, if enacted would change the structure, procedures, and

rights of institutions involved in O.A.A. discipline. Their general effect would be to streamline the procedure, define the O.A.A.'s jurisdiction over incompetence more clearly, provide for a wider choice of sanctions, and permit the O.A.A. to deal directly with incompetence attributable to mental, physical or addictive handicaps.

The relevant provisions of the proposed Act and Regulations are reproduced in Appendix VI . Regulations 20 and 21 define professional misconduct in a manner similar to that presently in force under the regulations under The Professional Engineers Act. Their adoption would not extend O.A.A. jurisdiction beyond its present operational limits, but clear jurisdiction could serve symbolic functions, alerting members and clients to O.A.A. interest in competence. The performance of this function would be reinforced by S. 30 of the proposed Act, requiring the Board to prepare and distribute (to members and to the public), a comprehensive Code of Ethics.

All discipline matters would be placed under the auspices of the Registration Board: preliminary investigation would be by a Board-appointed complaints committee. Nothing in the proposals requires committee members to be members of the Association but committee members cannot be Board members. The possibility of lay participation is suggested as well by proposals amending the requirements for Board membership: two Board members would be lay members, including one Ontario lawyer with ten years' experience. The complaints committee would be required to investigate all matters brought to its attention by sworn complaint and authorized to investigate complaints in other cases, for the purpose of recommending to the Board whether or not the case is an appropriate one for a formal hearing by the Board. The proposals do not clarify or extend the committee's right to investigate, and in particular, do not authorize spot-auditing of competence generally following a complaint or in the course of investigating the circumstances surrounding a particular complaint. As noted above, such powers would be valuable. In return for the requirement that the committee investigate where sworn complaints are received, the right of a complainant to lay a formal complaint before the Board and to be able to require a Board hearing is removed. The removal of the latter right is desirable so long as there are adequate guarantees of responsible investigation by the regular investigatory committee: it appears to be an overreaction to concerns about lack of guarantees to permit direct access to the Board. The truth seems to be that direct access was first allowed before the P.C.C. took over the task of informal preliminary investigation, and the right of direct access now appears to be an unnecessary,

anachronistic and possibly vexatious right. The question of whether or not the requirement of committee investigation upon receipt of a sworn complaint constitutes an adequate guarantee, is considered in Part H below.

The Act would enshrine Statutory Powers Procedure Act procedural requirements more clearly. It would permit the Board to order the O.A.A. to pay costs to members where it appears that the disciplinary proceedings were unwarranted, thereby enabling the O.A.A. to undo at least the financial prejudice caused by improperly instituted proceedings. There is no express provision in the Act permitting the O.A.A. to order a member found guilty in disciplinary proceedings to reimburse the O.A.A. in respect of investigation and prosecution costs.

The new provision (s. 17) would clearly allow the imposition of a full and wide range of sanctions. The ability to order conditional suspensions or re-education is essential if discipline is to cope with a variety of competence problems including those which can be solved by re-training or re-testing. Again, such provisions could serve symbolic functions and assist in a shift in orientation in a profession which has had very limited experience with competence in its discipline system. Similarly, the provisions of s. 18, allowing for suspension in cases of incompetence attributable to health or drug problems, are desirable in permitting the discipline system to deal directly with these particular types of incompetence for which normal disciplinary sanctions may be inappropriate. Finally, the new provisions establish waiting periods for applications for re-admission, and expressly permit the imposition of conditions (such as practice supervision or re-education), upon the re-admission or termination or cancellation of membership of a member.

V. DISCIPLINE BY THE O.A.A.: GENERAL ANALYSIS

The current O.A.A. discipline procedure contains institutions and procedures which could assist it to be effective in reacting against incompetence. In particular, the lack of absolute writing requirements, the absence of any systematic declining of jurisdiction over particular types of complaints (fees, negligence), the full reporting of Board discipline results and the presentation to the members of P.C.C. activity by means of reports of the Board based on information provided by the Board liaison member of the P.C.C., can each be noted as desirable attempts to make the system responsive to competence matters. The changes in the proposed new Act and Regulations will be helpful as well in the manner described above.

However, two basic problems plague the system, are not addressed in the proposed legislative changes, and severely limit the effects of O.A.A. discipline in promoting architectural competence. These problems are:

- (a) insufficiency of inputs; and
- (b) limited investigative powers.

(a) The insufficiency of inputs means that incompetent architects are not educated or removed from the profession by discipline, and that the deterrent effects of O.A.A. discipline cannot be great. Unless the system is able to uncover incompetent members, subject them to discipline and report the matter to other members with some frequency, discipline cannot be an important plank in the O.A.A.'s regulatory activities. The lack of client inputs is clearly apparent: architectural clients complain to the O.A.A. about incompetence very infrequently. The recent dramatic escalation in successful civil liability claims against architects belies the theory that the competence level of

practitioners is so high that complaints are unnecessary or the theory that clients are not able to perceive (or be apprised of), harm flowing from incompetent performance.¹⁷⁴ Instead, client abstinence from the O.A.A. complaints procedure seems to be related more to the nature of clients of architects. Almost three quarters of the clients of architects are companies, institutions, governments and other architectural or engineering firms: only 24% of clients are individuals.¹⁷⁵ It has been hypothesized (and, it is suggested, it has been demonstrated throughout this paper), that sophisticated non-individual clients do not complain, but express their displeasure with the quality of service rendered in other ways. As well, it is suggested that even individual clients of architects are more likely to be sophisticated than (say) individual clients of lawyers: recognizing their rights and financially capable of pursuing them, architectural clients do not complain to the O.A.A. The reluctance of clients to complain is demonstrated further by the results of the Architecture Engineering Client Survey. Of those clients in the sample dissatisfied with the quality of architectural services they had received, none complained to the O.A.A. as a means of voicing displeasure or resolving the matter.¹⁷⁶ While the O.A.A. does not advertise its discipline system, it is unlikely that even heavy advertising well beyond the capacity of its limited budget would increase significantly the number of client complaints.

The difficulties of limited inputs are exacerbated by the absence of a significant number of complaints by members about the competence of other architects. While members do report ethical breaches frequently, there are virtually no competence complaints, and there is no

express duty on members to report incompetence. Architects practise their profession in ways which should permit supervising and subsequent architects to be able to spot incompetent performance frequently. The absence of member complaints seems explicable only on the basis that architects do not appear to want to report other architects' poor performance.¹⁷⁷

Although most practising architects are insured, the O.A.A. has no arrangement with insurers to be informed of claims against architects as disciplinary inputs. While the insurers do publish loss control manuals, utilizing claims histories as means of avoiding similar losses in future, the O.A.A. is unable to discipline individual insureds whose negligence might amount to incompetence subject to discipline. It is unlikely that insurers would voluntarily disclose such information, and the O.A.A. is left to learn only of such civil actions as are actually commenced and which come to its attention by reports by other members or by newspapers. Similarly no attempt has been made by the O.A.A. to stimulate complaints from large-scale users of architectural services (e.g. particular government departments). It is impossible to assess the practicality or utility of a suggestion of increased effort to stimulate such sources.

(b) The inability to investigate beyond such information as is volunteered to the staff or P.C.C. in respect of the instant complaint operates as a particularly significant constraint in the context of a system which receives very few inputs. Names of allegedly

incompetent practitioners are reported to the O.A.A. quite infrequently; it would be most helpful (as the Executive Director of the O.A.A. acknowledged), to be able to conduct broad audits of the competence of these practitioners. It is a partial underutilization of the input to conclude that no incompetence or no incompetence serious enough to merit further proceedings has been demonstrated on the project complained about without testing more generally the competence of those few members complained against. The benefits of the ability to investigate are apparent from observation of I.C.A.O. discipline. An even more general practice inspection power may be desirable in a profession unable to stimulate competence complaints by other means despite evidence that significant problems of incompetence exist in the profession.

One further feature of architectural practice was suggested as relevant to diminishing the utility of discipline. When architects perform their services, there are frequently other professionals (architects, engineers) or knowledgeable personnel (contractors), in positions to be able to notice and correct errors. It is thus hypothesized that architects' errors will be noticed and corrected before noticeable harm occurs, more frequently than those of (say), structural engineers whose work may not be inspected by another professional before the completion of construction. The hypothesis cannot be advanced as an absolute proposition (witness the significant level of civil liability claims against architects); however to the extent that it is true, the importance of member-reporting and practice inspection as means of producing disciplinary inputs increases.

One further constraint created by the present orientation and procedures of the O.A.A. should be noted. There is a heavy dispute-resolution orientation displayed at the administrative and P.C.C. levels.

This orientation is not criticized, but to the extent that it permeates these levels, attempts to conciliate are more likely than attempts to detect and to sanction incompetence. Such an orientation might suggest that the P.C.C. should have wider powers to sanction. If most matters are to be resolved at that level, the opportunity to discipline, though perhaps only to a limited degree, might appropriately be granted to the P.C.C. The Executive Director of the O.A.A. has suggested that the P.C.C. have power to issue reprimands. The ability to order re-education in lieu of suspension or in lieu of pressing the matter to formal discipline might be appropriately placed at the P.C.C. level. A ready right of appeal from such inconvenient but not necessarily harsh sanctions might allay fears of prejudice arising from informality at the lower levels. The effectiveness of such a procedure would be enhanced by even greater publicity of P.C.C. activity than is presently undertaken. The results of individual cases (though normally anonymously), would be made known to members of the profession to serve deterrent and guidance functions: wider publicity might have some effect in stimulating client complaints and for these reasons could be considered even within the context of present P.C.C. activity. There can be no serious objection to annual publication to members and the public generally of charts similar to Chart D of Table XX, and valuable benefits might flow from such publicity.

PART H - CONCLUSION: PROPOSALS FOR REFORM

I. COMPETENCE: THE ROLE OF PROFESSIONAL ORGANIZATIONS

The appropriate role of discipline in the professions under study cannot be assessed except in relation to two other questions:

- (i) What is the extent of the responsibility of the regulatory agency to assure competence generally; and
- (ii) What is the appropriate relationship between discipline and other means of assuring competence in devising an overall "package" designed to fulfill the role identified as proper for the regulator by the answer to question (i).

(i) In Part A above, two definitions of "competence" were provided, but no attempt was made to describe that which reflected most accurately the ambit of the responsibility of professional organizations to the public.¹⁷⁸ It is suggested now that the professional organizations ought to be responsible for their members' continuing competence in both the narrow and the wide sense described above. That is, the organizations should attempt to ensure not only that their members are possessed of specified minimum levels of skills, knowledge and ability, but also that their members habitually apply these qualities in a "competent" manner. This is not to suggest that each type of manifestation of competence should be treated in the same way, or followed by harsh (or even any) sanctions, but only that the public has legitimate expectations that professional organizations are attempting to assure that their membership is competent in both ways. It is suggested that guarantees of both forms of competence are subsumed with oft-quoted phrases describing the professional organizations as delegates of the legislature exercising powers in the public interest. To the extent that client inability to make

meaningful judgments about quality, the possibility of significant harm following upon poor performance, and the protection of third party interests, etc. justify regulation of professional activities, they apply (often with equal or even greater force) to issues of competent performance as well as of the possession of requisite technical skills, ability or knowledge.

There is no quarrel with the proposition that professional organizations are responsible for the competence of their members in the narrow sense. Competence in this sense is the quality tested upon entry into the profession and is regarded as a prime component of what sets a professional off from non-professionals. However, there is occasional doubt expressed that professional organizations' responsibilities extend to guarantees of proper performance. Most (though not all) will agree that grossly negligent or reckless conduct constitutes incompetence that should properly be a concern of the organization: many will quarrel with the notion that negligent conduct is of interest to the organization. These latter would suggest that professional negligence is the concern of civil litigation exclusively.

The view that professions have no concern with performance, and particularly with negligent performance, is now largely discredited. If guaranteed competence is a major function of professional regulation, it is inappropriate to abdicate professional responsibility at exactly the level most important to clients and to the public generally. Client and public interests lie strongly in the direction of competent performance: it is largely professional interests that manifest any concern for skills, ability and knowledge for their own sake. To regard "performance"

as a matter to be regulated by the courts is to deny professional responsibility where it is expected and often needed most.¹⁷⁹ Legislatures, professional organizations, law reformers and observers who have considered the matter recently have all concluded that professional competence in all senses is appropriately a major, if not the major concern of professional organizations.¹⁸⁰ Elaboration of the proper role of professional regulators in competence and other matters is a prime task of the Professional Organizations Committee and is better done by it than by this author. It suffices for this paper to state that it will be assumed for the balance of the paper that professional organizations are responsible for taking steps that tend to guarantee that professionals possess acceptable minimums of skill, knowledge and ability, and that the professionals will habitually apply these qualities in a professionally competent manner so as to advance the interests of their clients and the public.

II. COMPETENCE: THE ROLE OF DISCIPLINE

(i) Acceptance of this assumption does not entail that professional organizations are responsible to assure that their discipline systems operate to provide such guarantees. Discipline is only one technique which might be deployed in a profession's assault on incompetence. Moreover, the many institutional constraints on the effectiveness of discipline entail two consequences:

- (i) Discipline can at best be expected to be supportive and protective of minimum competence only: it cannot be relied upon to produce excellence; and
- (ii) discipline alone (particularly when discipline is narrowly construed to include only expulsion or suspension of individual members), cannot be expected to have a substantial impact on the maintenance of even minimum standards of competence.

These consequences have led some commentators to conclude that discipline is ineffective in the attempt to promote continuing competence. Some have criticized discipline as being applicable only after the fact: professionals are disciplined only after they have performed incompetently and (usually) after they have harmed client or public interests.¹⁸¹ This is to ignore the cleansing, general deterrent, quality control and educational functions which might be performed if the experience of disciplining the one errant member can be preserved and utilized effectively: it is also to ignore the possibility that discipline may take the form of warnings, advice and admonitions which may be supplied before a potentially unsatisfactory course of conduct is pursued. Others have suggested that discipline has been proved ineffective in that civil liability rates have not decreased in consequence of its application.¹⁸² Even assuming that this is to be taken as a general comment not restricted to criticizing the effectiveness of particular disciplinary procedures, it should not be regarded as a condemnation of discipline. It may be that while discipline can deter certain kinds of conduct, it can have only a limited effect on the sorts of negligence that lead to civil liability in particular fields. That is not to deny that discipline may help to remove certain competence problems and to increase the standard of practice generally in the many cases in which incompetent performance will not lead to civil liability. It may also be that an effective discipline system must be operational for a substantial period before its effects on competence (as reflected in civil liability rates), becomes apparent: very few professions

have had a long-standing and serious interest in the use of discipline as a means of promoting competence.

It is submitted that discipline can play an important role in promoting the continuing competence of the members of each of the professions under study by the P.O.C. The nature of practice means that different constraints on the effectiveness of discipline operate in each profession and within different fields of practice within each profession: it entails that the appropriate role of and expectations for disciplinary action should differ among professions and fields of practice.

This is not to suggest that optimal use is being made of discipline currently, or that proposals by the disciplinary agencies for change will be adequate. The two groups of factors limiting the effectiveness of discipline, orientation and institutional factors (discussed in Part C above) are operative to varying degrees in all current and proposed disciplinary models. On the institutional side, some disciplinary systems suffer from a lack of clear jurisdiction over incompetence generally, or over certain forms of incompetence (induced by mental or physical incapacity or drug-related problems), in particular. Some suffer from an inadequacy of useful inputs into discipline while others lack investigative powers which would enable them to discipline incompetence more effectively. Some suffer from an inability to impose sanctions which might assist the functioning of discipline, and some labour under procedural and institutional frameworks that militate against significant disciplinary action.

The orientation of some disciplinary agencies limits their ability to use discipline fully. Some agencies operate under self-imposed limits of jurisdiction, thereby limiting artificially the inputs that might be ingested by the discipline system. Some follow other procedures that result in limited inputs or that expel inputs at dysfunctionally early stages of discipline. Some fail to employ powers at their disposal which might ensure better utilization of inputs received. Some follow publicity policies which are not conducive to obtaining optimal deterrence, quality control and educational values from discipline. Some view the ambit of discipline or the range of available sanctions from an artificially narrow perspective and thereby limit their willingness to initiate disciplinary proceedings.¹⁸³

The question of whether or not efforts should be made to encourage or assure that better use is made of discipline cannot be answered in isolation. First, it must be recalled once again that it is the total "mix" of techniques deployed by the regulatory agency in its attempt to promote competence that is relevant. While great stress might be laid upon discipline by one agency, another agency might legitimately regard discipline as an inappropriate response to the competence problems apparent in the profession regulated by it, and might stress peer review, continuing education or other techniques instead. It is improper to suggest that, because aggressive disciplinary action is effective for some problems in some professions, all professional regulators should pursue rigorous disciplinary procedures: indeed, the implementation of such a suggestion in some fields would produce an illusion of guaranteed competence without substance.

Secondly, the regulatory context in which discipline is to be applied is significant. The professions of law, engineering and architecture are completely self-regulating. The practice of public accounting is de facto regulated by the I.C.A.O. Should this context be changed (by removal of licensure requirements or by the transfer of regulatory jurisdiction from self-governing professions to a more public authority), the focus of concerns about institutional and orientation factors would shift. It is beyond the scope of this paper to comment upon the appropriate general regulatory structure for each of the professions under study. However, quite apart from changing the overall regulatory structure, it would be possible to transfer disciplinary jurisdiction to some authority other than the professional body itself. To some degree, ultimate disciplinary authority over public accountants is vested in a tribunal (the P.A.C.), distinct from the professional body concerned (currently largely the I.C.A.O.).

III. OUTLINE OF PROPOSALS

I suggest that to the extent that: (i) preferable guarantees of competence generally; or (ii) more effective use of discipline as a means of promoting competence in particular, are advocated as grounds for transferring competence-ensuring or disciplinary jurisdiction to tribunals distinct from the Law Society, the I.C.A.O., the A.P.E.O. or the O.A.A.,¹⁸⁴ the argument is not persuasive. My reasons for rejecting this argument are explained best when advanced in support of what I conceive to be the optimal practical mode of promoting the competence of members of the professions under study. In the context of the wholly or largely self-regulating professions, I would propose that the following procedure be adopted:

1. The legislation governing the regulation of each profession should make clear that it is the duty of the professional agency to assure that its members are competent. The agencies should be responsible for ensuring that their members possess adequate minimums of skill, knowledge and ability, and that their members habitually apply these qualities competently.

2. The legislation should allow professional agencies the widest possible choice among techniques that might be used to promote competence. Specifically in respect of discipline, the legislation should eliminate unnecessary technical barriers to the utilization of discipline in such manner as to each professional agency seems best. The agency should be free to structure its discipline system as it sees fit within the wide latitude permitted by the legislation.

3. A new institution should be created. This institution should be designed to provide guarantees to the public that the overall mix of techniques adopted by each agency is operating to assure effectively the continuing competence of its members.

In short, the proposal is that each professional agency be made responsible expressly for the competence of its members and that it be permitted to choose the best methods of assuring their competence. The new institution proposed will assure the public that the method chosen by each agency is operating effectively.

IV. ANALYSIS OF PROPOSALS

The first two planks of this platform (viz. that competence should be the province of the professional agencies rather than of some more independent tribunal, and that no particular mix of competence-conducive or disciplinary techniques be imposed upon the professional agencies), are most conveniently considered together. Although the argument proceeds largely in relation to discipline, it can be generalized in respect of other techniques of assuring competence.¹⁸⁵ The obvious alternative to allowing the professional organizations the authority to

discipline their members is to transfer this jurisdiction to a particular Professional Disciplinary Tribunal or to a Tribunal exercising disciplinary jurisdiction over members of a number of professions. Advocates of this alternative usually assume that the Tribunal will be composed of persons who are not members of the profession(s) subject to Tribunal jurisdiction, though the desirability of including at least one member who is legally trained is frequently acknowledged: occasionally a Tribunal composed of representatives of all self-governing bodies, or a mixed lay-professional Tribunal is proposed.

The idea of an independent "Professions Disciplinary Tribunal" was considered by the McRuer Commission. The following advantages of such a scheme were noted:

- (a) That by experience in the technique of adjudication, it would acquire a familiarity with the judicial process which would be conducive to the establishment of a uniform and fair procedure in all cases; and
- (b) That, since such a body would be independent of any one profession, it would not be vulnerable to the charge of "looking after its own"; at present no matter how fair-minded and conscientious a disciplinary body may be, a disgruntled member of the public may do serious damage to the reputation of a profession as a whole by quite unfounded complaints that its members "stick together". 186

Nevertheless, the McRuer Report rejected the independent tribunal. The Report felt that concerns about procedural fairness could be ameliorated by express statutory and administrative requirements and that the transfer of disciplinary jurisdiction was therefore unnecessary. It dealt only briefly with substantive reasons for the transfer, noting that although an independent tribunal "could not bring to any individual case that knowledge of the practice and standards of the particular profession ...

which is the main justification for the present system ... [it] ... could receive expert evidence on what constitutes professional misconduct in the particular profession of which the accused is a member."¹⁸⁷

It is submitted that the McRuer Report underestimated the benefits that flow from discipline by a professional organization of its members. Although practice and standards could be proved before an independent tribunal, the need for such proof would, I believe, operate to constrain the effectiveness of the tribunal, and most particularly in cases of alleged incompetence. I believe that more competence cases are likely to be considered in a system in which standards are assumed in most cases than in one where express proof is always necessary. This is particularly true in cases of minor incompetence which can be resolved best by admonitions, advice, or suggested (or even imposed) re-education. Such cases would be unlikely to be taken before a tribunal in which a formal trial would be needed in each case if only to prove acceptable standards. The wide use of informal proceedings and sanctions rather than formal discipline proceedings by the professions under study bears witness to the utility of informality in competence matters. The effect of transferring jurisdiction to an independent tribunal would be to limit the impact of discipline on incompetence,

Similarly, an independent tribunal might be unduly constrained in its choice of sanctions. Even assuming that the tribunal were authorized to be flexible in imposing sanctions, it would suffer from lack of expertise in imposing sanctions as well as in convicting generally. Unless complete regulatory control were transferred to the tribunal, it would have no control over available courses to which

convicted professionals could be "sentenced": such courses are designed and administered by professional organizations.

The concept of an independent tribunal would also be likely to lead to unnecessary duplication. It is unlikely that professional organizations will cease to discipline their members if an independent tribunal is created. The members of the profession have a strong interest in ensuring the maintenance of high standards of professional conduct,¹⁸⁸ and they would be likely to continue to press for discipline of errant members. For similar reasons, the tribunal might find itself limited in disciplinary inputs, if members of the professions choose to report incompetence to their professional organization rather than to the tribunal. The "visibility" of the disciplinary agency of a professional organization might be higher than that of the independent tribunal, thus depriving the latter of complaints by clients and other non-professional observers of allegedly incompetent performance. It may be unrealistic to expect the independent tribunal to be better funded than a professional organization's disciplinary agency, and the unavailability of funds to investigate or to prosecute might operate to limit the significance of discipline by an independent tribunal. All of these deleterious consequences of the transfer of disciplinary authority away from the professional organization most concerned are illustrated by the experience of the P.A.C. insofar as its discipline affects members of the I.C.A.O. (See Part E Section (b) above): they result in the virtual irrelevance of P.A.C. discipline to chartered accountants.

Professional organizations have an interest in the discipline of their members: they can perform disciplinary functions flexibly and inexpensively (committee members are almost universally not compensated for their contributions). It would be an overreaction to concerns generated by the apparent conflict or community of interest between professional organization discipline agencies and organization members to remove discipline from the control of these agencies if the concerns can be ameliorated by means less drastic and less destructive of the benefits of discipline by knowledgeable peers.

Assuming that discipline is to be left completely or largely under the control of the professional associations, it is suggested that (subject to the limited number of exceptions discussed below), no attempt be made to impose upon the associations any particular form or components of a discipline system; any specifically-defined role for discipline; or any particular mix of competence-inducing techniques generally. Such judgments are intimately related to the nature of practice in each profession and within various fields of each profession, and are best left to the judgment of persons knowledgeable about these matters. In particular, I believe that a strong familiarity with professional practice is a precondition of the ability to answer such questions as the following: What role can discipline play in this profession? What sorts of incompetence will it bring to the attention of this disciplinary agency? What types of incompetence will this agency not become aware of? Are efforts to increase sources of inputs practical or likely to be rewarding? How should complaints be investigated? When should practice inspections be conducted? At what stage should the identity of "offenders" be disclosed? Is some attempt to

produce a greater deterrent effect necessary? If so, what steps should be taken? What steps should be taken in respect of some identified high risk groups of practitioners in an attempt to forestall incompetent performance by group members? Should some other technique (peer review, mandatory continuing education, establishment of a compensation fund for victims of professional negligence), be stressed at the expense of discipline, or alternatively, should discipline be pursued more aggressively?

It would be inappropriate to attempt to answer such questions in the context of any one profession without the utmost familiarity with that profession: it would be improper to attempt to answer these questions in a common way for all of the professions under study.

It is only if the suggestion of restraint is rejected that any extensive discussion of particulars can take place. For instance, it may be believed that discipline should be pursued aggressively and that in an attempt to increase useful inputs, attempts should be made to encourage professionals to report apparent incompetence when they become aware of it. A great many techniques can be suggested to encourage such reporting: express rules requiring reporting; arrangement of insurance coverage so that incompetence imposes costs on all practitioners and encourages efforts to limit it; establishment of a compensation fund for victims of incompetence to achieve a similar effect of placing the costs of incompetence on the shoulders of all practitioners. The literature cited in the bibliography is replete with a variety of suggestions for improvement of any particular aspect

or deficiency of any discipline system. For the reasons given above however, I abstain from further discussion of particulars and suggest that these questions and their resolution are best left to the professional organizations concerned.

If the professional associations are to decide how discipline can operate best in their respective professions, they must be given sufficient authority to enable them to fashion an appropriate system. The study of current disciplinary procedures (in Parts D, E, F, and G above) showed that "institutional constraints" may prevent each of the disciplinary agencies from using discipline in the way each thinks best. Enabling legislation should free the associations of these constraints.

There can be little serious dispute about several matters. If the associations are to be responsible for guarding the public against all forms of incompetence, clear jurisdiction should be unequivocally granted to the associations. The express grant of jurisdiction could follow the form adopted by the A.P.E.O. when the Act and Regulations are combined: authority is given to discipline for professional misconduct; professional misconduct is defined to include gross negligence, incompetence, and infamous, disgraceful or improper conduct in a professional respect; and "gross negligence" and "incompetence" are each further specifically defined.¹⁸⁹ It would be preferable to enshrine the expanded definitions in the governing statute rather than requiring them to be gleaned from examination of multiple sources. As well, each

profession should be given express authority to take such steps as may be required (limiting practice, suspension), to protect the public from incompetence attributable to mental, physical, alcoholic or drug-related handicaps. Precedents for such authority are currently found in the legislation governing several of the professional organizations under study.

The agencies should also have clear authority to impose any of a wide range of sanctions. Several of the functions of discipline can be adequately achieved only by sanctions other than the most traditional ones of suspension or cancellation. Powers to reprimand, to require attendance at re-educational programs, to satisfy examiners of competence or to limit practice spring to mind as illustrations of the range of sanctions needed. The list at pages 44 and 45 above contains sanctions about which there should be little debate.

Some concern can be expressed however about the sanctions noted in the first paragraph following the list at p. 45. I suggest that the association should have power to order costs to be paid by the association to a professional acquitted of a charge of incompetence. These costs should be regarded as a cost of self-regulation and of the errors that will necessarily be made and are best borne by the profession as a whole. Similarly, I believe that the association should have power to assess against a convicted professional the costs of an investigation and prosecution. These are costs directly attributable to unprofessional conduct which ought to be borne by the errant professional. The association should have discretion to award or to withhold costs, so that appropriate accommodation can be undertaken in less serious cases or in cases where undue

hardship might result from the normally anticipated costs order. Several of the professions under study have one or both of these discretionary cost-awarding powers: there appears to be no rational reason for the power's existence or partial existence in some professions and not in others: it should be made available generally.

The other questionable sanction is the power to fine a convicted professional. The McRuer Report considered this power and resolved that professional organizations should not be able to fine convicted members, "especially when the fines are paid to the treasury of the [professional organization]." No reasons were given to support this exemption from the guiding principle adopted by McRuer that "all disciplinary bodies have a full range of sanctions available to them".¹⁹⁰ The power to fine, particularly where the fine is payable to the Province rather than to the professional organization, can be used as a means of stripping benefits from a practitioner who has performed recklessly in an attempt to increase profitability, and may be appropriate in other situations in which a strong sanction may be desirable to increase deterrent effects, but suspension or expulsion would be unduly harsh to the practitioner or to the clients who might suffer from such restrictions on their practitioner's rights. It is noteworthy that the Quebec Professional Code permits the imposition of fines as penalties, as does Ontario's Health Discipline Act, which was enacted after the McRuer Report.¹⁹¹ It is recommended that the P.O.C. consider whether a power to fine should be provided to the professional associations, and what uses of funds generated by fine payments, should be permitted.

The question of the available range of sanctions leads to that of which body (bodies), should be authorized to impose them. I break slightly with my operating premise (that the associations should decide on their own how discipline is to be used) to suggest: that all associations should have a "professional standards committee" and a "discipline committee"; that the professional standards committee should have primary responsibility for and specified jurisdiction over initial investigation; and that the professional standards committee be authorized to impose any of a limited number of sanctions at the conclusion of its investigation. I believe that there is value in some degree of uniformity of procedure among the discipline systems of the professions under study. Such uniformity would assist in increasing public understanding of the systems, and in designing the new institution that is to provide public guarantees. It also represents only a very minor change from the current position, and in most of the professional associations would necessitate only a change of the name of the initial investigative body. The uniform discipline system approach was adopted in The Health Disciplines Act which created a "complaints committee" and a "discipline committee" for each health discipline or group of health disciplines. The name "professional standards committee" is more reflective than "complaints committee", of the role currently played by the initial investigative committees of the professional associations being studied.

The professional standards committee (P.S.C.) should be authorized to require the attendance before it of professionals accused or suspected of incompetence. It should have authority to require the production of documents relevant to a charge under investigation by it, or to suspected

incompetence generally. It should be able to conduct spot audits of the competence of an accused professional and should be authorized to carry out a universal or specified-group-universal peer review (practice inspection) program if requested by the governing body of the association. This is not to suggest that each association must authorize or require the P.S.C. to engage in any of such activities, but only that each should be entitled to authorize these forms of investigation should the association believe them (or any of them) to be appropriate.

Many of the powers I would grant to P.S.C.'s are currently exercised by the Professional Conduct Committee of the I.C.A.O. If the peer review program which is under consideration by the I.C.A.O. is adopted, the P.C.C. of the I.C.A.O. may possess all of the investigative powers recommended. The equivalent bodies of some other associations exercise similar powers though without express authority to do so. The value of the ability to interview the "accused" is clear and undoubted. Existing procedures, whether expressly authorized or engaged in without authority present risks of procedural unfairness: these risks should be addressed, as the powers of P.S.C.'s are extended formally. In particular, a right to counsel during any P.S.C. interview, and notice of that right, should be given before interview powers are exercised.

The more contentious issue is that of whether or not practice inspection powers should be granted to P.S.C.'s. The P.C.C. of the I.C.A.O. has such powers, and senior administrative personnel of several professional associations indicated their desire to be granted such useful powers. Objection can be expected only from the Law Society and members of the legal profession, on the basis that such inspection

rights constitute an infringement of the solicitor-client privilege. This objection should not be permitted to prevail. It is of the utmost importance, if incompetence is to be distinguished from mere negligence or errors in judgment, that a number of transactions and the lawyer's performance in the course of them be examined. Adequate safeguards of clients' rights can be devised. Rights of inspection are granted to the professional inspection committees of the governing bodies of notaries and barristers in Quebec,¹⁹² A Special Committee on Competence (Chaired by Mr. Justice Matas) reported to the Benchers of the Law Society of Manitoba recently and recommended that practice inspection be permitted in the context of the investigation of a complaint against a lawyer. Safeguards, including the requirement that a court order be obtained, are provided. The Report was adopted by Manitoba Benchers on January 26, 1978. The Planning Committee of the Nova Scotia Barristers' Society, which is currently studying continuing competence in the profession has considered the Matas Report and "finds itself in general agreement with the recommendations proposed" (the Report has not yet been considered by Council of the Nova Scotia Society). In British Columbia, the advisability of practice inspection is under consideration by the Committee charged with implementation of the Benchers' new authority over competence.¹⁹³

The importance of inspection and the willingness of the Law Society to breach solicitor-client privilege where it is regarded as appropriate to do so to insure against improper lawyer conduct are illustrated by Law Society Regulations requiring the keeping of books and records in particular ways and authorizing inspection of these books by Law Society

investigators.¹⁹⁴ It is under the authority of such Regulations that "blitz audits" have been conducted and that substantial achievements in the direction of correcting negligent record-keeping preventing unwitting breaches of ethical rules (e.g. Ruling 14 - Borrowing from clients), and detection of deliberate wrongdoing have been made. The validity of such regulations which represent an inroad into the solicitor-client relationship was upheld by the English Court of Appeal in 1968, in a case which held the contractual duty of a lawyer not to disclose clients' affairs subject to the lawyer's duty to obey "the law", including Law Society accounts rules.¹⁹⁵ By parity of reasoning, the Law Society could be authorized to conduct practice inspections as described above. The value of practice inspection in detecting incompetence has been recognized by The Health Disciplines Act, which grants practice inspection powers where incompetence is suspected in respect of a dentist, doctor, optometrist or pharmacist.¹⁹⁶ Professional practice inspection powers have been recommended by the Justice Society in England, by the Lay Observer in England and by observers in Ontario.¹⁹⁷ Representing a half-way house between lifelong certification and periodic recertification, these useful powers should be available to the P.S.C.'s of those professional associations which regard them as a desirable adjunct to their disciplinary procedures.

It is also suggested that the P.S.C.'s should be permitted to impose sanctions upon professionals at the conclusion of their investigations. The availability of such powers suggests procedural due process concerns which must be addressed, but subject to satisfactory resolution of these problems, the suggestion should be adopted. The study in

Parts D, E, F and G above indicated a very substantial use of advice and counselling by present-day P.S.C.'s. Many cases which come before P.S.C.'s are appropriate for reprimands or for withholding of further action on conditions (such as limited practice, undertaking to adopt new systems or to engage in re-education programs). Where more serious sanctions are proposed, formal hearings before the discipline committee may be needed. But where a fairly minor sanction is proposed and is acquiesced in by the professional, it should not be necessary to press the matter forward to the discipline committee and to present once again evidence known to the P.S.C. and accepted by the accused professional. While this list should not be regarded as exhaustive, it is proposed that P.S.C.'s should be able to be empowered by the governing body of the association to impose such penalties as reprimand (with or without publication), re-education requirements, or satisfactory performance before a competence examination board, possibly with interim limitations of practice in aid. The professional proposed to be sanctioned might be given the right to request a formal hearing before the discipline committee in any case in which the P.S.C. proposes to impose any of these sanctions. This proposal would serve to separate discipline intended primarily to be helpful to accused practitioners from that intended to be largely punitive and deterrent. Quebec's Professional Code makes a similar distinction. Under s. 111, the Bureau of a professional corporation may, upon the recommendation of the professional inspection committee, oblige a professional to serve a period of refresher training and limit the professional's ability to practice in the interim. The professional

inspection committee makes its recommendations after investigation and after observance of such procedural guarantees as each profession provides for committee activities. The formal discipline process involving trial before the discipline committee is established and regulated by other provisions of the Code. It is possible for a similar division of functions to be achieved by by-laws and regulations passed under s. 58(2) of The Health Disciplines Act, which would enable helpful and minor sanctions to be imposed by Complaints Committees (equivalent to P.S.C.'s).¹⁹⁸ The availability of appropriate sanctioning power at earlier stages of the discipline process can permit more effective use of discipline in competence matters.

I suggest that the professional organizations be permitted to establish institutions which they might find conducive to the greater utility of their discipline systems. In particular, they should be able to establish fees mediation, conciliation and arbitration services, which might provide a wider range of inputs into discipline. Similarly, they should be permitted to establish organization-operated-and-funded schemes for the compensation of victims of incompetence. The Law Society currently maintains a fund "to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which he was or is a trustee": should the Law Society or any of the other professional organizations wish to establish a similar scheme in respect of incompetence, there should be no impediment to its doing so.

The question of the general membership composition of the governing bodies professional organizations is beyond the scope of this paper. However the participation of representatives of two unique classes, lawyers and lay persons, is frequently advocated as a means to improve the fairness, efficiency, responsibility and accountability of professional discipline agencies. The participation of lawyers is advocated on the basis that while professional organizations may be well-suited to gauge the competence of their members, they are not necessarily well adapted to or experienced in the quite different task of judging such competence in procedurally-fair ways. The training and experience of many lawyers prepares them for such endeavours and acclimatizes them to perceive and avoid courses of conduct which violate rules of administrative law and "natural justice." In recognition of these qualities, some professional organizations are required or authorized to include on their governing body, or on their discipline or professional standards committee, lawyers (usually of specified years' standing at the Bar).

While the authorization of membership of legally-trained personnel is supported, it is suggested that no governing body or committee should be required to be composed of any number of such persons. All professional organizations and many of the committees retain counsel and consult freely as matters progress. Most of the glaring problems that can arise in the course of disciplinary proceedings are now well known to the professional organizations: practical constraints might well outweigh the benefits of requiring legally-trained personnel as part of the quorum

of any disciplinary body. However those organizations which prefer to require one or more members of their governing body or of particular committees to be legally trained should be free to elect this requirement.

The question of lay participation is more vexed. This paper's outline of recommendations¹⁹⁹ indicated that while the control of competence in general and discipline in particular was to be left to the professional organizations, an institution was to be created to guarantee that the techniques adopted by each institution were providing effective competence guarantees. As the McRuer Report noted:

"The traditional justification for giving powers of self-regulation to any body is that the members of the body are best qualified to ensure that proper standards of competence and ethics are set and maintained. There is a clear public interest in the creation and observance of such standards. This public interest may have been well served by the respective bodies which have brought to their task an awareness of their responsibility to the public they serve but there is a real risk that the power may be exercised in the interests of the profession ... rather than in that of the public. This risk requires adequate safeguards to ensure that injury to the public interest does not arise." 200

The safeguard recommended by the McRuer Report was the appointment of lay persons to the governing bodies of all self-governing professions. Although the assumptions underlying this recommendation were not discussed at length by McRuer, it is possible to identify several useful functions which could conceivably be performed by lay representation. The inclusion of members of the lay public could serve to provide an additional perspective on problems addressed by the profession; the different weighting of values by lay and professional persons could

serve to make the profession more responsive to perceived regulatory inadequacies if lay membership were permitted. The inclusion of lay members could provide a "window to the general public" through which the activities of professional organizations can be viewed. This lifting of the veil of secrecy behind which professionals are sometimes accused of hiding, could serve to reinforce public confidence in professional regulation and in professionals generally. The presence of lay members could establish a broader base of authority for regulation and produce a "process value" in itself: the regulatory process is more legitimate as the public, a primary recipient of regulatory benefits is permitted to participate in regulatory decision-making.

The likelihood that lay representation will perform any of these safeguarding and legitimizing functions adequately and consistently can be doubted. The customary practice is for the Provincial Cabinet to appoint a small number of lay representatives to participate with a far greater number of professionals in the regulatory process. No criteria for selection of lay persons are announced before or after the lay representatives are selected, nor are express guidelines concerning what "constituency" the lay appointees are to represent, provided. Instead, lay persons with varying degrees of interest, capability, merit, dedication and "representativeness" (of various subgroups of the lay public generally), are cast adrift in a sea of professionalism, told (perhaps) that they are to "safeguard the public interest".

If one doubts the impact which any individual professional can make in the overall professional regulatory framework, one must harbour even more grave suspicions about the likelihood of individual lay representatives providing significant public guarantees. Assuming that the lay representative does weigh values differently, it is unlikely that this outsider will prove persuasive enough in the company of a vast majority of professionals to produce important shifts in policy. Assuming that the lay representative is disturbed by some aspect of professional regulation, there is little likelihood of use being made of such observations outside the profession: lay representatives are not equipped with support staff who can assist in gathering and analysing information, with publicity facilities or other meaningful powers to stimulate change from outside. In the usual case, they do not even report to any member of the Cabinet that appointed them. In the end, one must doubt whether or not the base of regulation is broadened by the inclusion of lay members in this manner. The absence of a constituency to which lay members are accountable renders their lot a lonely one. Surrounded by professionals and constantly exposed to the concerns of professionals as seen by the professionals, lay members are likely to come to view matters in the same way as do their professional colleagues.²⁰¹ The pace of this tendency towards homogeneity may be increased depending upon the attributes of lay members at the time of their appointment, and upon the infrequency of contact by lay representatives with non-professional constituencies after appointment. The extent to which public visibility of the professional discipline system is increased by lay participation in it can also be doubted. While lay involvement ensures that the few lay representatives observe the system (in connection with the cases with which they are involved), there is no realistic possibility that lay members will provide other interested "outside" lay persons with detailed information about the disciplinary system.²⁰²

In the end, lay representation provides public safeguards in only a haphazard and fortuitous manner at best. The institution does not provide those guarantees required if there is to be assurance rather than appearance of effective regulation. Nevertheless, lay representation may be of assistance in some cases, and the policy propounded by the McRuer Report ought not to be discarded lightly. I would support extension of the policy of appointing lay members fully entitled to participate as P.S.C. or discipline committee members. However I would not support a requirement that P.S.C.'s or discipline committees be composed of at least some specified number of lay persons, or a requirement that a quorum for the conduct of the business of such committees include one or more lay members.²⁰³ The practical difficulties of assuring the attendance of lay members, coupled with the expected fairly low return from lay participation militate against requirements of lay quotas. Individual professions should be free, however, to establish such requirements for themselves should they regard them as desirable.

It is sometimes suggested that the required public guarantees can be provided by designating a government minister to be, ex officio, a member of the governing body of each self-regulating professional agency. By virtue of s. 12(1) of The Law Society Act, the Attorney General for Ontario and all persons who have held that office are ex officio Benchers of the Law Society. Section 13(1) requires the Attorney-General to "serve as the guardian of the public interest in all matters within the scope of this Act or having to do with the legal profession

in any way". For these purposes, the Attorney General may, at any time, "require the production of any document, paper, record or thing pertaining to the affairs" of the Law Society.

Even in combination with lay representation, this method of attempting to provide public guarantees is inadequate. In the context of overseeing the Law Society's efforts to promote competence, one must doubt the diversity of perspective gained by the inclusion of the Attorney General, who is always a lawyer. Even in other professions, the device is unlikely to succeed. The importance and difficulty of the task of providing public guarantees will not necessarily be recognized by the Attorney General in priority to other pressing affairs of the Ministry. No budget or staff support infrastructure is guaranteed to the Attorney General specifically as guardian of the public interest in professional regulation. The Attorney General is given no powers greater than those of an ordinary governor other than the express power to require production. While there is an ultimate political threat behind the Attorney General's participation, that threat is too distant and unwieldy to provide continuing guarantees of adequate professional regulatory activity on a day-to-day basis. In the end, the Attorney General is, at best, likely to participate in professional regulation only as any other single member of the governing body. This hypothesis appears to be borne out by the absence of initiatives undertaken by the Attorney General in his ex officio role under The Law Society Act. The Attorney General has not imposed on the Law Society any of the requirements which it is suggested below are necessary if the public guarantee is to be meaningful. For the reasons given below, it is suggested that

although these deficiencies in the Attorney General's role can be remedied, and the role can be moulded to become more effective, the creation of a new and separate institution is a preferable policy choice.

It is noteworthy that no jurisdiction which has considered the matter recently has elected to rely upon lay representation, ministerial representation or a combination of representation by these two groups alone as adequate guarantors of the public interest. In some jurisdictions, lay representation has been combined with a "Lay Observer" institution (described more fully, below). In others, a professions council whose jurisdiction extends to monitoring or regulating professional "self-regulatory" bodies has been adopted. Ontario's Health Disciplines Act combines the institutions of lay representation, Lay Observers, professional monitoring and regulatory council, and direct ministerial involvement to provide guarantees to the public that professional organizations maintain vigorous efforts to assure the competence of their members.

V. A NEW INSTITUTION

I recommend the creation of a new institution. The institution should be given the express mandate of guaranteeing to the public that each professional organization is effectively assuring the continuing competence of its members. The new institution is referred to as the Professions Office (P.O.) below, but this name is adopted for convenience of reference only. The P.O. should be based upon principles of reporting, publicity, complaints review and such further adjunctive powers as are necessary to assure its ability to guarantee effective regulation by the professional organizations. It should be housed in an institutional setting selected to enhance its performance and to protect its vigour, independence and responsibility. So described, the design of the P.O. is modelled upon institutions created under Ontario's Health Disciplines Act, under Quebec's Professional Code, and under the English Lay Observer system.

(a) Reporting: All professional organizations should be required to report regularly to the P.O. The reports will assist the P.O. to assess the activities of the organizations; will provide the base for P.O. publicity; and enable the P.O. to perform its adjunctive functions. 204

The professional organizations should report to the P.O. at monthly or quarterly intervals to detail the workloads of their P.S.C.s, their discipline committees and such other disciplinary organs as may be relevant. The reports should include a case by case analysis in a form similar to that of such Charts as Chart A of Table V of this Report. They would thus indicate source of complaints, demographics of complainant and professional, nature of misconduct or incompetence

alleged and disposition of the matter. The reports should include the full text of written discipline or professional standards committee reasons for decisions. The reports should name all accused practitioners (as indicated below, this does not mean that all names would be included in P.O. publications). At slightly less frequent intervals, the organizations should submit to the P.O. a detailed statement of their discipline-related and competence-related activities and experience for the period. This report should indicate areas of misconduct and incompetence identified through the organization's experiences. It should indicate what steps are being taken or considered by the organization to combat perceived misconduct and incompetent practice. It should describe implemented or proposed changes in discipline, education, peer review, advisory services, insurance arrangements or other procedures designed to guarantee the competence of its members.

These reports will enable the P.O. to perform one of its primary functions, that of critical assessment of the effectiveness of the professional organizations' control of member competence. Self-regulation does not necessarily mean private regulation. Permitting meaningful public access to information concerning the activities of the organizations will help to attain the benefits of diverse viewpoints and values and of public guarantees without eroding professional independence or threatening confidentiality (safeguards on publication are discussed below). The procedure is conducive towards achieving the best of the benefits of public and of professional self-regulation. To permit public input, the P.O. should have authority to

advise the organization about any matter arising from the reports. Consideration of the competence problems identified by the reports in light of organization policies stated in the reports and in light of the potential functions of and constraints on various techniques of competence guarantees identified by this report and by other study papers prepared or being prepared by the Professional Organizations Committee, could permit the P.O. to use its different perspective to make helpful suggestions.

The professional organizations might benefit in other ways from this reporting. Knowledge of the concern of an outside agency would be likely to induce attention and concern that might otherwise not be as highly stressed by the organizations. The public interest in the profession's duty to guarantee competence would be constantly underscored to each organization. The requirement to report to the P.O. would encourage similar reporting to members: such reporting has been shown (above) to be a useful component of a discipline system.

Powers to require reporting, in a manner similar to that which I have recommended, are found in Ontario's Health Disciplines Act and in Quebec's Professional Code and their utility cannot be seriously doubted.²⁰⁵ Nor should objections related to problems of practicality be permitted to prevail. To be sure, the imposition of reporting requirements will add to the workload of professional organizations: however it will not do so unduly or without benefits which outweigh the costs. The regulatory body of the medical profession in Ontario currently reports to its membership in a manner similar to that in which I propose the P.O. be informed of organization activities. Copies of excerpts from two representative issues of The Interim Report of The College of Physicians

and Surgeons of Ontario are reproduced in Appendix VIII. The cost of reporting should fairly be regarded as an incidental cost attributable to the professional organizations' willingness and desire to be self-regulating.

(b) Publicity: The P.O. should report its activities and opinions to the public and to a responsible minister as fully as is consistent with the need for confidentiality in some professional (and especially disciplinary) affairs. The P.O. should publish much of the information supplied to it by the professional organizations frequently and regularly. Virtually all of the aggregate data can be published as can most of the individual case-by-case information. The P.O. should withhold publication of the names of professionals where publication would be inappropriate: no person acquitted in disciplinary proceedings should have his or her identity revealed, and it may be a proper guiding rule that names should be published only when the professional organization has itself ordered publication. Information about the organizations' efforts to promote competence should be synthesized and published by the P.O. in a form comprehensible to the widest possible readership audience. The P.O. should also publish its views on the effectiveness of the regulation and should give details of any advice given by the P.O. to a professional organization. All of this information should be made available to the minister responsible for the P.O. and the professions.

The P.O.'s ability to make information about professional regulation available to a broad cross-section of the public will serve many useful purposes. The prospect of the exposure of ineffective practices will operate as an incentive to professional organizations to maintain vigilance over competence: it is a strong guarantee of professional regulatory concern. This value of publicity has been widely

commended and increased publicity has been advocated, by a great many of those who have written about the regulation of professional competence. The significance of increased publicity is simply illustrated by a report of the Long Term Planning Committee of the College of Physicians and Surgeons of Ontario. The Committee recommended that the affairs of the College be conducted with as much openness as possible and that in particular the College adopt the policy of publishing names of practitioners found guilty of professional misconduct. This change in policy was expressed to have been induced by public pressure which followed publicity about the College's refusal to reveal the identity of a practitioner found guilty of professional misconduct. 206

Publicity provides the opportunity for helpful inputs, from diverse sources, into professional regulation. Many persons who may have differing backgrounds, qualifications, skills and perspectives, share a common interest in professional competence: the ability of such persons to get access to important information will permit them to make suggestions that might assist professional regulators. Currently, input from these sources (which include acknowledged experts in their fields) is impossible because information required to enable assessment and comment is unavailable.

Publication may serve to increase the number of complaint inputs into discipline. Publicity of and by the P.O. staff may serve to increase public awareness of the complaints mechanism, or may serve to encourage complaints from a class of clients that would otherwise express dissatisfaction in other ways. Publicity in this form may produce a multiplier effect. The press has shown itself eager to publicize the activities of professional regulatory agencies, and the resulting exposure operates as a form of free advertising of the existence and

interest in discipline (or competence) of the professional organizations. The example of the medical profession in Ontario provides some evidence of the truth of this hypothesis. The enactment of The Health Disciplines Act and creation of the Health Disciplines Board produced a flurry of press coverage. The operations of the Board have resulted in a much higher profile for the College of Physicians and Surgeons of Ontario. The effect was commented upon by the Complaints Committee in its February 1977 report (18 months after the promulgation of the Act).

"There is no question that there has been a significant increase in the number of complaints and inquiries being received by the College. Evidence of this may be seen in 1975 there were 68 complaints that were considered by the Complaints Committee subsequent to July 1975, while in the first ten months of 1976 there were 234. Of these 162 ... were dismissed, 45 ... were dismissed with admonishment ...; 19 cases ... were referred to Discipline; 4 cases ... were referred elsewhere; and 4 ... were deferred," 207

The requirement of publicity by the P.O. guarantees the availability of the information to professionals themselves. The publication policies of some professional organizations have been shown to be inappropriate to obtaining maximum deterrent, educational and quality control functions from discipline. Publicity of the reports submitted might also serve to encourage greater reporting of incompetence by professionals themselves to their professional organizations. To the extent that a particular group of practitioners is identified to clients to present a higher-than-average risk, competent members of the group will feel an incentive to report incompetent fellow members and restore the reputation (and possibly, the economic viability), of the disparaged group.

The requirement that the P.O. report to a responsible minister serves an additional guarantee function. The persuasive value of a well-documented, carefully conceived case which the P.O. could put before the minister should not be underestimated. Its ability to report directly to the minister serves to enhance the status of advice given by the P.O. to a professional organization. Similarly, a requirement that P.O. reports be tabled in the Legislature could provide additional informal authority which could increase the significance of P.O. observations. P.O. observations and recommendations should be highly valued: the P.O. will have the benefit of careful comparison among professions to add to its analysis of trends and patterns within individual professions as it monitors their activities, successes and failures over time.

Under the Québec Professional Code, the Office des Professions du Québec is required to publish compilations of the discipline decisions of all professional corporations, omitting the names of members disciplined. The Office is to report to the Minister annually and its report is to be laid before the National Assembly. Under Ontario's Health Disciplines Act, the Health Disciplines Board is required to:

"... submit an annual report on its activities to the minister which shall include such additional information as the minister may require and the minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly ..." 208

The ability to report to the Minister and to publish widely is the cornerstone of an institution designed to guarantee the effectiveness of professional regulation to the public while leaving the specific mode and

details of regulation to the professional organizations themselves.

(c) Complaints Review: it is suggested that the P.O. perform a complaints review function similar to that undertaken by the English "Lay Observer".

The Lay Observer is an institution created by the Solicitors Act 1974

(s. 45). The section is as follows:

Lay Observers

45.-(1) The Lord Chancellor may, if he thinks fit, appoint one or more persons (in this section referred to as "lay observers") to examine any written allegation made by or on behalf of a member of the public concerning the Society's treatment of a complaint about a solicitor or an employee of a solicitor made to the Society by that member of the public or on his behalf.

(2) No solicitor or barrister shall be appointed as a lay observer.

(3) A lay observer shall hold and vacate his office in accordance with the terms of his appointment, and shall, on ceasing to hold office, be eligible for re-appointment.

(4) The Lord Chancellor may give general directions to lay observers about the scope and discharge of their functions, and shall publish any such directions.

(5) The Society shall consider any report or recommendation which it receives from a lay observer and shall notify him of any action which it has taken in consequence.

(6) The Lord Chancellor may appoint staff for lay observers.

(7) Remuneration for lay observers and their staff and any other expenses of lay observers shall be paid out of money provided by Parliament.

(8) In determining the numbers, terms of employment and remuneration of lay observers and their staff and any amount payable by way of expenses under subsection (7), the Lord Chancellor shall act only with the approval of the Minister for the Civil Service.

(9) The Society shall furnish a lay observer with such information as he may from time to time reasonably require.

(10) The Lord Chancellor shall direct the submission to him of annual reports by lay observers on the discharge of the functions conferred on them by this section.

(11) The Lord Chancellor shall lay a copy of any report under subsection (10) before each House of Parliament.

The General Directions given by the Lord Chancellor to the Lay Observer are the following:

General Directions of the Lord Chancellor

In exercise of the power conferred on him by section 28A(4) of the Solicitors Act 1957 the Lord Chancellor hereby gives the following general directions:-

1. In these directions expressions have the same meaning as they have in section 28A of the Solicitors Act 1957 and

"allegation" means a written allegation made to a lay observer by or on behalf of a member of the public concerning the Law Society's treatment of a complaint;

"complainant" means the member of the public by whom or on whose behalf an allegation is made;

"complaint" means a complaint made by or on behalf of a member of the public to the Society about the conduct of a solicitor or a solicitor's employee;

"lay observer", where there are more than one, includes for the purposes of paragraphs 6 and 7 below all lay observers.

2. Subject to paragraph 4 below, every allegation which -

(a) concerns the treatment of a complaint by the Society on or after 1st January 1975, and

(b) is made within three months of the date on which the Society has notified the complainant of its decision on the complaint

shall be examined by a lay observer and no other allegation shall be so examined.

3. A lay observer shall seek from the Society whatever information he considers necessary for the purpose of examining an allegation.

4. A lay observer shall not re-examine an allegation (or examine a fresh allegation relating to the same complaint) unless he is satisfied that he has received relevant information which could not reasonably have been provided in relation to the allegation (or original allegation) when he examined it.

5. When a lay observer has examined an allegation he shall send a written report of the results of his examination to the complainant as well as to the Society and to the person about whom the complaint was made.

6. A lay observer shall submit to the Lord Chancellor an annual report on the discharge of his functions and such other reports relating to those functions as he thinks fit; but no report made under this paragraph shall identify any individual or firm.

7. A lay observer shall include in every report made under paragraph 5 or 6 above any recommendation which he considers appropriate for inclusion in the report.

8. Subject to these directions a lay observer shall follow such procedure for examining allegations as he thinks fit.

9. These directions shall come into force on 17th February 1975.

It will be seen that in England the Lay Observer's role has been limited to the legal profession. The Lay Observer (L.O.) is charged with reviewing the process by which the Law Society has disposed of any complaint against a lawyer, and not with the merits of individual complaints. The L.O. can act only when a written complaint is received calling into question the Law Society's treatment of a complaint to it. The L.O. cannot act on his own initiative.

In fact, the present Lay Observer has taken a very liberal view of his role and of his jurisdiction. The first two reports of the Lay Observer are reproduced in Appendix IX. The Lay Observer has considered the merits of the subject of complaints referred to him. In some cases, he has sought further information from the accused lawyer. In others he

has referred the matter back to the Law Society with a request that its Professional Purposes Department (a P.S.C. Committee) reconsider the merit of the allegation.

It is submitted that the P.O. have all of these powers and a number of ancillary ones. The P.O. should be permitted to assist prospective complainants to professional organizations to frame their complaints. Since most organizations require complaints to be written, and as this requirement may operate as a filter on disciplinary inputs, the availability of independent assistance might prove helpful. Ontario's Ombudsman currently performs a similar function in some cases. It is suggested that the Lay Observer's jurisdiction be expanded to include the ability to consider unwritten client complaints and the ability to act on its own motion. The reports of professional organization activities which will be received by the P.O. may suggest that insufficient or inadequate consideration or investigation has been given to a particular complaint: in such a case the P.O. should be entitled at least to request that the complaint be considered further or re-investigated. Consideration should also be given to the question of whether or not the P.O. should be authorized to attend all meetings of P.S.C.'s or other disciplinary organs of professional organizations. This power to observe was recommended by the Commission of Inquiry on Health and Social Welfare of Quebec.²⁰⁹ The assurance provided by personal observations is a clear benefit to be derived from a power to attend: the risk of loss of independence of P.O. orientation is a cost to be weighed against the benefit. To the extent that P.O. personnel become intimately familiar with particular organization practices, views, and members, the benefits of objectivity, detachedness and differing perspectives are likely to be endangered.

The benefits of a Lay Observer power are clear. The P.O.'s unique orientation may enable it to appreciate complaints in a light different from that in which it appeared to the professional organization: in these cases the ability to request reconsideration is helpful. Lay Observer powers permit the benefits of discreet and objective public supervision of internal professional organs. These benefits can in turn make discipline more effective by contributing to public confidence which may in turn prompt members of the public to complain in appropriate cases. The disenchantment of complainants who regard themselves as having been treated unfairly has a ripple effect throughout the whole of professional regulation. The value of meaningful public assurance of fairness should not be underestimated. The presence of Lay Observer powers would also properly permit the abolition of the power of members of the public to require the formal discipline procedure of professional organizations to be invoked. This power, which enables complaints to be pressed to the discipline committee or governing council even when dismissed as without merit by the P.S.C. is inconvenient to professional organizations; it provides the opportunity for vindictive clients to create unfair pressure on professionals. It would become redundant when significant guarantees of adequate consideration by the P.S.C. can be provided.

A great many jurisdictions have recognized the value of including a Lay Observer institution in their professional regulatory structure.²¹⁰ The College of Physicians and Surgeons of Ontario has recently recommended a very similar institution for the medical profession. The Report of the Long Term Planning Committee included Recommendation 4:

Recommendation 4: That in order to increase the credibility of the College, one of the functions of the lay members of Council be an annual report containing their opinions as to how the College has fulfilled its functions during the year. This report should be directed to the President and Council of the College and presented to the Minister of Health by the President as a high priority item.

The thrust of the McRuer Report and other forces placed lay members on the Council of the College. Although the purpose is not stated in the Act, it is not unreasonable to surmise that this was to allow not only a public participation in the workings of the College, but also to allow a public view of our function, one step in the process of accountability.

We are aware that our members have no obligation to report to the Ministry, and do not represent an identifiable constituency. To the knowledge of the Committee, the Ministry has never asked for a report from their appointees to the Council.

We are also aware that our lay members have made a great contribution to our College, and have approached their responsibilities seriously and with their professional colleagues in an atmosphere of respect and trust. In no way do they regard themselves, or are they regarded by the College as "watchdogs".

Nevertheless, they are as a group probably the most informed members of the public in the entire province with regard to the function of the College. If lay judgments as to our function are to be made, there would appear to be no more qualified group to make them than the lay members themselves. 211

For the reasons given above, I prefer that the lay observation and reporting function be performed by the P.O. rather than the lay members of the regulatory agency: nevertheless, the thrust of Recommendation 4 is to acknowledge as a "high priority item" the value of lay observation.

(d) Adjunctive Disciplinary Authority: The more difficult question relates to whether or not further powers are required to make the P.O. guarantee effective. Many jurisdictions and observers have suggested that reporting, publishing and lay observer functions, even in combination with lay membership on professional regulatory agencies, are not capable of assuring that the agencies appreciate and undertake effectively their public responsibilities.

Various combinations of the following additional powers have been recommended for or granted to professional organization supervisory bodies:

1. The ability to require the P.S.C. to consider matters that the P.O. regards as worthy of investigation;
2. The ability to require the formal discipline organ (discipline committee) to consider whether or not it should take jurisdiction (irrespective of the resolution at the P.S.C.), or to require the formal organ to hold a formal disciplinary hearing;
3. The ability of the P.O. to intervene in P.S.C. or discipline committee proceedings to act as an advocate of the public interest in such proceedings;
4. The granting of status to the P.S.C. to appeal to the next highest organ (P.S.C., discipline committee, council, court), the disposition (including sanction imposed), of any case at any level of proceedings;
5. The designation of the P.O. as a body capable of undertaking itself any of the functions of disciplinary organs of the professional organizations. In particular, should a P.S.C. dismiss a complaint, the P.O. could have authority to require the P.S.C. to investigate more fully or the P.O. could itself conduct the investigation. Or should the discipline committee dismiss a formal charge, the P.O. could conduct a new disciplinary hearing or could hear an appeal from the discipline committee's decision;

6. The ability of the P.O. to approve rules and regulations of the professional organizations, to advise the organizations about rules and regulations which ought in the P.O.'s opinion to be adopted, or to impose such rules and regulations on the professional regulators. 212

It is apparent that these adjunctive powers represent different degrees of P.O. involvement in professional organizations' activities. They can be justified to the extent that they are regarded as necessary to assure the P.O.'s effectiveness as a guarantor to the public of effective action by the professions. Some of them, however, represent fairly substantial departures from general proposition presented here that the professional organizations are the most able to decide what action is best to promote competence. They should be adopted only if it is felt that the basic reporting, publicity and observation principles described above will not produce effective public guarantees.

I am unable to assess the necessity for such further adjunctive powers or any of them. It is noted however that the framers of both Quebec's Professional Code and Ontario's Health Disciplines Act regarded it as necessary to include a broad range of adjunctive powers. In each of these cases, the equivalent of the P.O. was given the adjunctive powers described in points 1, 2 and 5 above. Quebec's Office des Professions was given the power described in point 6: in Ontario, that power was granted specifically to the responsible Minister. The P.O.C. should regard the question of what adjunctive powers are required to provide effective guarantees as a priority issue in its consideration of the continuing competence issue.

(e) Institutional Setting: The P.O. must be established so that the dangers inherent in some of the less effective public guarantee institutions are minimized. Problems of role definition, institutional interest, financing, the lack of a clearly defined constituency to be

represented, personnel selection, and isolation were identified as inhibiting the efficacy of lay members of organizational bodies or of a government minister as guardian of the public interest.

The P.O. must be protected from these dangers. While it is desirable that the P.O. be a single-line agency, one concerned solely with overseeing the activities of professional organizations, the dangers of isolation and of excessive contact with the professions to be monitored suggest that the P.O. might better be located as a distinct part of a broader-based institution. The obvious agency that springs to mind is the Ontario Ombudsman: the P.O. could be established as a separate division of that institution. This choice should not be regarded as firm, but the concerns which suggest it as a possible location for the P.O. should be borne in mind as a final selection is made.

Careful consideration must be given to the personnel selection process. Of course, the P.O. must be composed of persons independent of the professions under its jurisdiction. The P.O. should include only persons who are keenly aware of their role and possibly who have demonstrated their ability to understand such a role elsewhere. It may be that the selection process should be more broadly based than a simple Cabinet appointment procedure. The P.O.C. should consider and specify the qualifications that ought to be required of P.O. personnel, and should specify their mode of selection and permissible tenure.

The P.O. must be funded adequately to enable it to perform effectively. Without sufficient funds or staff-support the P.O. can provide only the appearance and not assurance of effective regulation. This is not to say that the P.O. should be publicly funded. While budget and staff

requirements may be established by the P.O. in consultation with the responsible minister, a case can be made to suggest that the cost of P.O. operations should be borne by the professions themselves. The cost is attributable to the price of self-regulation. If the professions wish to have delegated to them the otherwise-public function of regulation, they should be prepared to shoulder the cost of all components of the delegated authority. If the ability to choose freely the appropriate competence-conducive strategy requires that guarantee systems exist to assure effective choice, the professional organizations can fairly be required to pay the cost of the systems as the price of being allowed the choice.

VI. SUMMARY OF RECOMMENDATIONS

For the reasons elaborated above, this section summarizes those recommendations applicable to the architectural, engineering, and legal professions generally, and to the Institute of Chartered Accountants of Ontario. Further consideration must be given to other accounting organizations once more general decisions have been made by the P.O.C.

The recommendations contained in this report can be summarized as follows:

1. Legislation governing the regulation of each profession should make clear that it is the duty of the professional agency to assure that its members are competent. The agencies should be responsible for ensuring that their members possess adequate minimum skill, knowledge and ability, and that their members habitually apply these qualities competently.

2. The legislation should allow professional agencies the widest possible choice among techniques that might be used to promote competence. Specifically in respect of discipline, the legislation should eliminate unnecessary technical barriers to the utilization of discipline in such manner as to each professional agency seems best. The agency should be free to structure its discipline system as it sees fit within the wide latitude permitted by the legislation.

In particular, the following constraints on the effective operation of discipline should be addressed:

- (a) Limitations of jurisdiction;
- (b) Narrow range of sanctions;
- (c) Lack of a professional standards committee with powers to require the attendance of members, conduct practice investigations, and to impose sanctions (from among a limited number of sanctions), on professionals without the need to engage the formal discipline process;
- (d) Inability to maintain such ancillary services (fees mediation, compensation fund), as may be advisable; and
- (e) Lack of lay representation within the professional agencies.

3. A new institution should be created. This institution should be designed to provide guarantees to the public that the overall mix of techniques adopted by each professional agency is operating to assure effectively the continuing competence of its members. The new institution should be based on the following principles:

- (a) Reporting;
- (b) Publicity;
- (c) Complaint review;
- (d) Such adjunctive powers as the Professional Organizations Committee regards as necessary; and
- (e) An institutional setting and membership composition designed to minimize the dangers inherent in attempts to provide public guarantees of effective professional agency regulation.

FOOTNOTES

FOOTNOTES

1. I acknowledge with thanks the contributions of Steven Wilson, Heather Werry, Janet Yale, Sally Colvin, Linda Kahn, Gary Shortliffe, of the staff of the Professional Organizations Committee, and various executive and governing members of the professional organizations under study to the production of this report. I especially acknowledge the help I have received from my secretary, Kathy O'Rourke, who spent endless hours compiling charts and appendices and typing this report.

In this Introduction I have attempted to limit the number of references to specific material. I have considered all of the sources referred to in the Bibliography listed under the headings General, Major Sources - Law, Engineering, Architecture and Accounting, in writing this Introduction.

2. Under this definition, it would be irrelevant that the cause of any of these deficiencies was poor organization, lack of management or systems skills, or failure of subordinates to perform properly. Intentional misconduct is excluded as it raises significantly different issues.
3. At pp. 228.
4. "Inputs", are usually complaints by clients or other professionals. But, as indicated in Parts D, E, F and G below, they may be newspaper reports, the results of staff investigations or other sources of information about incompetent performance.
5. "Continuing education" is used in the widest sense, to include such diverse techniques as courses, loss control manuals, peer review and recommendation programs, or advice from the professional body (see for instance, A.B.A. Manual, Avoiding Unintentional Grievances, Bibliography item 34).
6. For instance harsher penalties, more effective publicity of penalties, the use of a greater range of sanctions may each be suggested.
7. The range of "standardized" activities is quite broad: See, Engel, Standardization of Lawyers' Services, [1977] Am. Bar Found. Res. J. 817, in which criteria for the identification of standardized services are suggested.
8. The usual procedure for the establishment of Canadian Institute of Chartered Accountants standards.

9. In its Report on the Grievance System (Bibliography item 39), the Committee on Professional Responsibility of the Bar of the City of New York regarded detailed standards as unnecessary. The general standards of the American Bar Association were regarded as adequate to permit the Grievance Committee to test conduct and develop more particularity on a case-by-case basis (see Report, especially at pp. 134-136).
10. Marks and Cathart (Bibliography item 1, at p. 235).
11. This is not always a virtue of discipline. In some cases, the ability to threaten disciplinary action (even if it is illegal to do so: see s. 305 of the Criminal Code, R.S.C. 1970, c. C-34), may provide unfair leverage to a dissatisfied and vindictive client.
12. This effect does not depend on the disciplinary agency's acting in this fashion but only the professionals' perception of its so acting.
13. The jurisdiction of courts over lawyers used to permit such awards. On summary motion, the court could order a solicitor to pay the complainant and in default of payment to be struck from the rolls (expelled): See, for example, Re Solicitor (1916), 37 O.L.R. 310 (C.A.). While the court still retains such jurisdiction in theory, it has not been exercised for many years: the courts have ceded full disciplinary authority to the Law Society.

Some disciplinary agencies operate fees mediation or arbitration services (Law Society, Manitoba; I.C.A.O.) while others will comment on the appropriateness of fees charged (Law Society, U.K.; Professional Conduct Committee of O.A.A., see Table XX, below).
14. See Part D below.
15. In a famous study, Jerome Carlin concluded that the regulatory agency he studied (the organized Bar of the City of New York), was less concerned with scrutinizing the moral integrity of the profession than with forestalling public criticism and control. Carlin, (Bibliography item 35, at p. 161. Carlin inclined to the view that this pattern was "not confined to Metropolitan New York". See also Holland (Bibliography item 14), at p. 563 (where the view is expressed that the function of discipline is merely the self-preservation of the profession). A great many of the articles cited in the bibliography note that the forestalling of public pressure is a key reason for control of members or for their more effective control (see also Part H, below), by professional self-regulatory agencies.
16. Misconduct and ethical violations were the almost-exclusive focus of disciplinary interest in the past, and it is only fairly recently that discipline has come to be regarded as helpful and available in competence matters. The general "misconduct orientation" (see Part C below), of disciplinary agencies has been widely acknowledged: See Clark - Bibliography item 3, at p. 110; Steele and Nimmer - Bibliography item 2, at p. 1007; Marks and Cathart - Bibliography item 1 at p. 207; Arthurs, H. - Bibliography item 36, at p. 442; and Arthurs, S. - Bibliography item 10, at p. 261.

17. For a good example, see the Cross Committee Report (Bibliography item 59, recommending that incompetence be dealt with by civil litigation except in cases of high public visibility, where the "profession must be seen to be doing something", and see generally Carlin, Lawyers' Ethics, op. cit.
18. See n. 16, above.
19. See McRuer, Bibliography item (g) (General) at p. 1184.
20. A good illustration of the phenomenon is provided by real estate conveyancing by members of the legal profession. A lawyer who performs incompetently when acting for a buyer of land may leave a legacy of problems to be resolved by lawyers acting in future transactions. Later-acting lawyers may be required to trace parties or to secure governmental approvals when such activity would have been obviated by competent work in the first instance. Similarly, the failure of sellers' lawyers to perform conveyancing services at the appropriate level is frequently alleged to require additional efforts by lawyers acting for buyers and lenders: services inadequately rendered by sellers' lawyers require buyers' or lenders' lawyers to do, or to redo the work themselves.
21. See the Quebec Professional Code (Bibliography item (b) (General)), which requires the establishment and particular modes of operation of various professional disciplinary organs.
22. Edward P. Belobaba, "Civil Liability as a Professional Competence Incentive," working paper #9 prepared for the Professional Organizations Committee (1978).
23. Digests are published naming all parties involved in recently-investigated litigation. A cross-check of digest with membership names could help to identify members being subjected to civil liability claims.
24. For instance claims may be made against the Law Society of Upper Canada Compensation Fund in respect of dishonest legal practice. Extension of the Fund to permit its availability in incompetence cases would provide inputs if claims against the fund were monitored.
25. The "Taxing Master" is an official of the Supreme Court of Ontario. He is authorized by statute (The Solicitors' Act, R.S.O. 1970, c. 441) to "tax" a lawyer's bill, upon the application of the lawyer or the client. "Taxation" involves consideration of what the proper amount of the lawyer's bill should be: in effect, it is a fees arbitration service. The possibility of taxation may be helpful to a client who might be able to have the lawyer's fee reduced. It can also be helpful to the lawyer, for once the lawyer's bill has been "taxed", the claim for fees can be enforced just as if the lawyer had sued the client and had obtained a judgment ordering the client to pay the amount found due on "taxation" (Solicitors Act, s. 13).

26. See pages 25-30, below.
27. See, for instance, Huszagh and Molloy, Bibliography item 37.
28. See pages 246-248 below. The Professional Organizations Committee is currently doing research on continuing education, recertification, and practice review as a means of promoting continuing competence.
29. See Huszagh and Molloy, Bibliography item 37, at p. 299.
30. They may be able to perceive the deficiencies themselves or through in-house professionals employed by them.
31. See Section (iic), below.
32. In interviews with 45 clients who had experienced "serious problems" in their relationship with their lawyers, Steele and Nimmer found that not 1 of the 45 brought the problem to the attention of the discipline system and only 1 approached the organized Bar in any way. The interviews were conducted in Michigan, a state with a well-regarded lawyer-discipline system, Bibliography item 2 at p. 957. See also Bibliography item (e) (General) at p. 16 and the data noted in Parts D, E, F and G below.
33. Agencies advance such reasons as not wanting to harass a professional until the complainant appears serious; the need to involve the complainant, whose evidence may be necessary later; and the frequent difficulty of understanding exactly what the complaint involves when it is reported orally.
34. Citations are superfluous. Comments to this effect appear in almost all of the books, articles and reports listed in the Bibliography.
35. See, for instance, the analysis of Tables IX, X and XI below (I.C.A.O.)
36. Persons such as judges, building inspectors, or tax department officials and securities commissions, occupy positions that permit them to monitor the competence of some professionals.

In Michigan, the legal disciplinary agency has made arrangements with appellate courts so that it is notified whenever a motion to dismiss an appeal for failure to prosecute is granted. On receipt of this report, an investigation is initiated to determine whether the dismissal resulted from attorney neglect (Clark Report, Bibliography item 3, at p. 65). Arrangements can be made with court clerks, building department officials, or bank or government officials.

A formal procedure is institutionalized in The Public Hospitals Act (Ontario). By s. 40, hospitals are required to report internal

disciplinary action to appropriate professional discipline authorities:

R.S.O. 1970, c. 378 s. 40

40. Where the privileges of any member of the medical staff are restricted or cancelled for any reason by specific resolution of the board of governors or where any disciplinary action is taken by a board or a medical advisory committee against a member of the medical staff because of incompetence, negligence or any form of professional misconduct, the administrator shall forward a report of the action and the reason for it to the College of Physicians and Surgeons of Ontario. 1965, c. 107, s. 5.

37. I will limit the discussion in this part to inputs by way of complaints. In some agencies staff activity produces a significant number of inputs, but in all, complaints loom large as the single biggest source.
38. See First Report of the Lay Observer, Bibliography item 5 at pp. 5-6; Marks and Cathcart, Bibliography item 1 at pp. 216-217; O.L.R.C. Report on Administration of Ontario Courts Bibliography item 33, at p. 202; and Matas Committee Report, Bibliography item 38, at p. 25.
39. See p. 11 above.
40. See pp. 265-271, below.
41. The experience of the A.P.E.O. with such provisions is discussed at p. 188 below. The constraining effects of potential liability for costs might be overcome by provisions enabling successful complainants to receive awards compensating them for harm suffered by virtue of professional incompetence.
42. Steele and Nimmer, Bibliography item 2 at pp. 923-924.
43. See below, pp. 251-255.
44. See generally, Clark Committee Report, Bibliography item 3, recommending that for the reasons described in the text, disciplinary agency members should be appointed for three-year terms with no member to be eligible to serve more than two consecutive terms (at pp. 39-45, and especially at p. 39).
45. See generally Part H, below.
46. See, for instance the representative views of the Matas Committee in Manitoba (Bibliography item 38, at pp. 25-30).

47. See Report No. 2 of the Competence Committee to the Benchers of the Law Society of British Columbia, at p. 2, reversing an earlier suggestion that the committees be separate "to prevent any implication that incompetent behaviour necessarily implies professional misconduct or conduct unbecoming a member of the Society". The co-ordination problems are not insuperable: see the argument in the Report cited at footnote 43.
48. Bibliography item (g) (General).
49. An agency may have no right to view documents in the possession of the accused professional, or even to question the professional: See Parts D, E, F and G below.
50. The general standards established by the American Bar Association Code of Professional Responsibility (reproduced in n. 97, below) are regarded as sufficiently precise that an active competence discipline orientation can be adopted using them as a base: See Report of the Committee on Competence of the Association of the Bar of the City of New York, Bibliography item 39.
51. See the working paper by Professor Belobaba: note 22 above.
52. McRuer Report, Bibliography item (g) (General) at p. 1195; Clark Report, Bibliography item 3 at p. 92.
53. While I speak here in terms of suspension from practice, it must be recalled that some agencies can be given the (technical) power only to suspend association membership. See text at p. 4 above.
54. See the more detailed consideration of this issue at p. 244, below.
55. Each of the agencies under study can choose between formal and informal disciplinary proceedings: See Parts D-G, below.
56. See, for instance, American Bar Association manual, Avoiding Unintentional Grievances, U.S.A. 1975, using the experience of "those involved in the discipline of lawyers" to describe to Association members the unintentional grievances they cause and to suggest ways of avoiding similar problems in future. See also Appendix VIII, discussed in the text at pp. 260-265 below.
57. Clark Report, Bibliography item 3, at pp. 143-146.
58. For instance, under Quebec's Professional Code, the Office des professions is required to report anonymously the decisions of professional disciplinary bodies, Bibliography item (b) (General), s. 12(v).
59. Mervyn Rodgers, Secretary-General of Law Society of New Zealand, [1977] Recent Law 305 at p. 308.
60. See Part H, below.

61. The Law Society is the only significant disciplinary agency for Ontario lawyers. Other institutions do exercise some disciplinary authority however. The Courts have an inherent jurisdiction to discipline solicitors, who are its "officers" (See Appendix B to the Research Directorate's Position Paper, "History and Organization of the Legal Profession") however this authority has fallen into complete disuse. To the limited extent that Courts do react to incompetence, it is by reporting instances of perceived incompetence to the Law Society discipline system, or by expressing negative views of counsel's performance in their judgments: See, for instance Schrump v. Koot (1978), 18 O.R. (2d) 337 (C.A.) Informal discipline can be exercised through the Legal Aid system. On occasion, senior administrative persons have removed incompetent lawyers from the panels of those permitted to represent clients assisted by the Legal Aid program.
62. The Law Society reports that the task of reconciling the Code and the Handbook has now been completed: "the two have ... been amalgamated into a single set of Rules of Professional Conduct" which the Benchers adopted in Convocation on May 19, 1978. The newly consolidated Rules are currently being prepared for publication and distribution: Communique, number 76, May 19, 1978.
63. In 1976-77, \$30,000 was recovered in one trusteeship alone. This accounts for the far higher recovery figures in 1976-77 than budgetted recovery figures for 1977-78 (See the Werry Report at p. 35).
64. S. 34 of The Law Society Act. See Appendix I.
65. See Law Society proposed amendments in Appendix B to the Research Directorate's Staff Study, "History and Organization of the Legal Profession."
66. Law Society of Upper Canada, Intermediate Brief to the P.O.C., No. 6, "Continuing Competence," at pp. 4, 6 and 7.
67. Some of the legislation governing other legal professions is set out in the Appendix to the Law Society's interim brief. Many of the cases interpreting similar statutes are considered by Gordon, Bibliography item 129. Examples of judicial constructions in particular cases may be seen in W.J. Smith, "Disciplinary Proceedings Before the Law Society", [1971] Law Society of Upper Canada Lectures 285.
68. Werry Report, pp. 3-4.
69. Werry Report, p. 4.
70. Werry Report, pp. 4-5. The Report continues:

However, for civil actions where a client's trust money appears in jeopardy or for criminal charges that relate to the solicitor's practice the Law Society will commence its investigation immediately. An audit of the solicitor's books would be authorized

70. Cont'd...

and one of the Law Society's auditors could be in the solicitor's office the following day. If a member is to be disbarred the Law Society recognizes it is in the public's interest that it be done quickly. Moreover, from a public relations standpoint the Law Society prefers to have newspapers report a "disbarred" lawyer was convicted of theft rather than a lawyer. (At p. 5).

71. Werry Report, p. 5.

72. Werry Report, pp. 5-6.

73. Figure I is taken from the "History and Organization of the Legal Profession"; Figure II from the Werry Report at pp. 37-39.

74. Law Society of Upper Canada, Intermediate Brief to P.O.C., No. 6, "Continuing Competence," p. 5. Also various organizations and persons such as the Canadian Bar Association, Legal Aid, newspapers, Members of Parliament are aware of the Law Society's jurisdiction and frequently forward complaint letters to the Law Society." (Werry Report, p. 4.)

75. Steele and Nimmer note that complaint rates vary between about 125 and 1850 complaints per 10,000 lawyers. (Bibliography Item 2 at p.946). The English Law Society's experience is within this range. The following figures are taken from Appendix A of its answer to Question 4 of the Questions asked of it by the Royal Commission on Legal Services:

Total Number of Complaints Received				Number of Practising Solicitors
	<u>Solicitors Complaint</u>	<u>Lay Complaint</u>	<u>Total</u>	
1971	-	-	4,860	26,327
1972	-	-	5,270	27,379
1973	623	4,230	4,853	28,741
1974	626	4,116	4,742	29,850
1975	731	5,021	5,752	31,250

76. Werry Report, p. 10.

77. Werry Report, p. 11.

78. Werry Report, p. 11.

79. Werry Report, p. 13.

80. Werry Report, p. 13.

81. Figure III is taken from the "History and Organization of the Legal Profession", supra n. 65 at p. 108 ; Figure IV from the Werry Report.
82. Werry Report, p. 26.
83. See pp. 102-103 below.
84. See n. 67 above, and Parts E, F and G below.
85. Law Society of Upper Canada, Intermediate Brief to the P.O.C., No. 6, "Continuing Competence," p. 7.
86. Sheila Arthurs, Bibliography item 10.
87. See Belobaba, op. cit., n. 22 above.
88. The 1976 Report is published in Minutes of Convocation, Vol. 2 No. 3 at pp. 61-62.
89. Werry Report, p. 18.
90. Werry Report, p. 18. The factors described in this paragraph of the text were also noted by Sheila Arthurs in her study of disbarred lawyers: Bibliography item 10.
91. Werry Report, pp. 18-19.
92. Werry Report, pp. 21-22. She also notes that there are no statutory provisions enabling complainants to force Law Society employees to refer complaints to the Discipline Committee.
93. "In 1977 about 47% of the Invitations to attend were violations of Ruling 14 in the Professional Conduct Handbook that were brought to the Society's attention through an amendment to the Form 2 Report. In 1976 the Form 2 Report was extended to include the borrowing from client situations. From the explanations of solicitors in Ruling 14 Invitations it would appear that many in the profession are not aware of their responsibilities in this area. The Invitation to Attend is usually used to breaches of Ruling 3 dealing with advertising and soliciting. The more inexperienced members of the profession (based on date of call) appeared before the Disciplinary Committee more frequently on Invitations than on sworn complaints." (Werry Report).
94. The only publicity given to the fact of reprimands in Convocation is that provided in the Annual Report of the Discipline Committee (Minutes of Convocation op. cit. n. 79(a) above) which reports only that there were 2 reprimands in Convocation in 1976.
95. See also Chart C of Table V indicating the extensive misconduct record of the lawyer involved in Case 7.
96. See Belobaba, op. cit., n. 22 above.

97. Bibliography item 33, Part III at p. 202.
98. The Committee's powers to sanction in Invitation to Attend proceedings are contained in Regulation 14 (reproduced in full in Appendix I at p. 12): "the Committee, in addition to any of its other powers may after ... informal investigation advise the member with respect to the matter". The Committee's exercise of more severe sanctioning powers on Invitations is precluded by s. 33 of the Act (see Appendix I, p. 1), which requires the formal complaint procedure to be followed before such sanctions are available to the Committee (or to Convocation). The one exception to the general failure to report to the profession on the subject matter of Invitations to Attend, relates to Ruling 14 (improper borrowing from clients) violations. There have been a great many such matters before the Discipline Committee on Invitations, and the Law Society has included in its Communique (on at least two occasions) notices to the profession advising members of the existence and general import of Ruling 14 (see also n. 84 and text at n. 79(a), above).
99. Clark Report, Bibliography item 3, at p. 1.
100. See text and note at n. 16 above. The misconduct orientation of the Law Society is further confirmed by its extensive efforts to insure against financial misdeeds and by the terms of reference of its compensation fund. Heather Werry's Report contains the following information about these matters:

"Audit Provisions"

The audit provisions in the Law Society Act and in the Rules and Regulations are some of the most extensive in the world and have been emulated by other Law Societies. The Law Society has five chartered accountants to conduct all the audits of the members' books. The auditors play an integral role in the discipline process both as a deterrent force through their on-the-spot "blitz" audits and in their function as the Law Society's investigators of possible breaches of the Society's Regulations pertaining to the keeping of books.

The Chairman or Vice Chairman of the Discipline Committee authorizes usually 30 "blitz" audits a month. Fifty percent of these are inside the Toronto area. Which Solicitors are chosen for these audits depends on various factors. Generally, sole practitioners in recognition of the fact that they have given the Society more trouble in the past, receive more attention. A complaint letter from a client or a third party notice to Legal Aid for income tax owing or a member of the profession who is worried about a particular solicitor or problems on a solicitor's Form 2 Report might all trigger an audit by the Law Society. Sometimes, solicitors request the Law Society to do an audit of their books. If the auditor in the course of a blitz audit discovers something that warrants further enquiry he will commence a full-scale investigation on the spot. In addition to the 30 blitz audits, there may be special audits authorized to cover specific emergency situations. In these cases the auditor proceeds in the same way as on any other audit but pays particular attention

100. Cont'd...

to the matter that initiated the audit. In making his report the auditor tries to uncover all the facts leaving it up to the lawyers to decide what, if anything, is done about it. The audit section has a working relationship with the Institute of Chartered Accountants and if it appears from their investigations that a Chartered Accountant has acted improperly the Institute will be notified.

Compensation Fund

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The limitations and guidelines for the determination of grants from the Compensation Fund are canvassed in "History and Organization of the Legal Profession." It should be noted that both the monetary limits on grants per applicant and on total awards per solicitor have been substantially exceeded. The limit of \$150,000 for total awards in respect of the conduct of any particular member has been more than tripled. Convocation felt that otherwise claimants, due to their members, would have received only token payments thereby defeating the purpose of the Compensation Fund. The individual claimant limit of \$25,000 was also greatly exceeded for one solicitor for two reasons. Firstly, the solicitor had abused the great personal trust his clients had placed in him, many of whom were uneducated, helpless and of modest means. Secondly, Convocation felt partially responsible as the solicitor had been disciplined in the past for similar behaviour and he had continued to steal from clients while the investigation that led to his disbarment was underway.

[The following tables present] figures for the Compensation Fund grants for the years 1975-1977. The annual increase in grants for the year ending June 30, 1977 was more substantial than in previous years. This coincided with a \$10 increase in the compensation fund levy to members. It has been the experience of the fund that approximately 50% of the total claims received are paid out in grants.

COMPENSATION FUND

Year Ending	Grants	Total Receipts	Receipts From Fees	Claims Received not processed at year end
June 30/77	\$505,587.11	\$389,892.70	\$269,380.00*	\$3,029,110.41
June 30/76	\$140,044.41	\$276,153.44	\$167,170.00	\$2,447,399.48
June 30/75	\$171,601.14	\$268,437.71	\$156,495.00	\$2,132,618.10

* Increase in fee receipts due primarily to \$10 increase in compensation fund levy to members

100. Cont'd...

SUMMARY SINCE THE COMMENCEMENT OF THE FUND

Period	Total Number of Claims	Total number of solicitors	Total Grants	Annual increase in Grants
As of June 30/77	996	108	\$4,039,073.59	\$509,314.18
As of June 30/76	940	100	\$3,529,759.41	\$140,044.41
As of June 30/75	909	94	\$3,389,715.00	\$171,601.14
As of June 30/74	889	89	\$3,218,113.86	

(Werry Report at pp. 31-34.)

101. Bynoe, C., in September 1976 Law Society Gazette 256 at p. 263.
102. On the question of the ability of a legal disciplinary agency to set meaningful standards, see Bibliography item 39. The analogous problem has been addressed by Ontario's medical profession: See the Reports of the Discipline Committee of the College of Physicians and Surgeons of Ontario (Appendix VIII below), and especially such cases as case 4 of the February, 1977 Report.
103. See Law Society (U.K.) answers to Questions posed by Royal Commission on Legal Services, op. cit., Section VI, Question 3 and Appendix to VI.3.2. The Manitoba scheme is described in The Law Society of Manitoba 1877-1977 (Winnipeg, 1977) at p. 152.
104. The Professional Organizations Committee's Client Survey-Law Report indicates that none of the 20% of the sample who had complaints about fees proceeded to have the bill taxed. Of the entire sample, 9.6% suggested taxation as a possible avenue for redress of fees complaints:

Distribution of the respondents who had a complaint by the action taken (frequency and percentage)

<u>Actions which could be taken</u>	<u>Frequency</u>	<u>Percentage</u>
Discussed the complaint with lawyer	8	40.0
Discussed problem with another lawyer	6	30.0
Had the bill taxed	0	0.0
Other	5	25.0
No response	1	5.0
N=	20	100.0

104. Cont'd...

Distribution of users of legal services by the course of action which could be taken if there had been a complaint about fees (frequency and percentage) N=73

<u>Types of Action</u>	<u>Frequency</u>	<u>Percentage</u>
Don't know	17	23.3
No response	14	19.2
Law Society of U.C.	9	12.3
See lawyer	16	21.9
See another lawyer	3	4.1
Ontario Bar Association	4	5.5
Have bill taxed	7	9.6
Nothing	4	5.5
Legal Aid	2	2.7
Refuse to pay	3	4.1
Forget it	1	1.4
Bill Reviewed by L.S.U.C.	1	1.4
Discourage others from seeing lawyer	1	1.4
Complain to friends who are lawyers	1	1.4
Go to court	4	5.5
	<u>90</u>	<u>119.3</u>

Distribution of users of legal services who had complaints about fees by the course of action which could be taken if there had been a complaint about fees N=15

<u>Types of Action</u>	<u>Frequency</u>	<u>Percentage</u>
Nothing*	2	13.3
No response	1	6.7
Don't know	5	33.3
Review by court	2	13.3
Tax bill	2	13.3
Bar Association	1	6.7
Law Society	2	13.3
Legal Aid	1	6.7
Talk to lawyer	2	13.3

*Nothing should be qualified. The respondents wrote that nothing is the best course of action since action would be futile.

Source: Tables 18, 21 and 22 of Professional Organizations Committee's Client Survey - Law Report.

105. Communique Vol. 2 Number 7 (October 21, 1977), at pp. 268-9.

106. See for instance Table IV, Case 3 of 1977.

107. Ruling 33: See Appendix I.

108. The A.B.A. Code provides:

DR 6-101 Failing to Act Competently.

(A) A lawyer shall not:

- (1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.
- (2) Handle a legal matter without preparation adequate in the circumstances.
- (3) Neglect a legal matter entrusted to him.

DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

- (A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.
- (B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.

DR 1-102 Misconduct

(A) A lawyer shall not:

- (1) Violate a Disciplinary Rule.
- (2) Circumvent a Disciplinary Rule through actions of another.
- (3) Engage in illegal conduct involving moral turpitude.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

109. See C.B.A. Code Chapters II, III and XIV (Appendix I).

110. And others who occupy positions that enable them to observe and evaluate the quality of legal services rendered: see for instance, the incomplete list at n. 36 above.

111. The P.O.C. Survey of Law Firms produced the following data:

Percentage distribution of law firms clients by type of client, by location and size of firm, Ontario, 1976.

<u>Type of Clients</u>	<u>Firm Size (No. of Lawyers)</u>			
<u>Total (N=1841)</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Public corporations	3	4	7	16
Non-public corporations and unincorporated business	17	21	30	42
Legal Aid recipients	14	11	10	4
Other individuals	61	60	48	33
Government and non-profit	3	3	5	5
Other	1	1	0	0
<u>Toronto</u>				
Public corporations	3	5	10	21
Non-public corporations and unincorporated business	21	27	35	41
Legal Aid recipients	15	11	12	4
Other individuals	58	54	40	29
Government and non-profit	3	2	3	6
Other	0	1	0	0
<u>Other</u>				
Public corporations	3	3	4	7
Non-public corporations and unincorporated business	14	17	26	44
Legal Aid recipients	13	11	10	10
Other individuals	64	64	52	39
Government and non-profit	4	4	7	5
Other	1	0	0	1

Source: P.O.C. Survey of Law Firms, Q.IV.4.

112. The P.O.C.'s Client Survey-Law, Report shows that 20.9% of respondents did not know where they could complain about the quality of legal services rendered, while a further 16% of respondents did not answer the question asking where they could complain. Ms. Nakatsu concluded that the non-respondents did not know where they could complain, and combined the 20.9% and 16% figures to conclude that 36.9% of respondents did not know where to complain: Client Survey-Law, Report, at p. 33.
113. See P.O.C. Survey of Law Clients, Report, p. 27.
114. The Ombudsman/Ontario, First Annual Report, 1975-1976, at p. 18.
115. The list of complaints received during the period July 1976-March 1977 is as follows:

LAWYERS - CLIENTS
OUTSIDE JURISDICTION

NO.

RESULT

3443 legal costs causing financial strain

referred

3444	mishandling of divorce case and child custody	inquiry made/referred
3445	mishandling of real estate transaction	referred
3446	loss suffered resulting from legal incompetence	referred
3447	lawyer's letters unintelligible because of overuse of legal jargon	referred
3448	professional misconduct alleged	referred
3449	failure to keep in touch regarding court case	referred
3450	intimidating actions and coercion during trial	referred
3451	delay in filing appeal on a conviction	inquiry made/referred
3452	poorly represented in court on charge of impaired driving	referred
3453	guilty of conflict-of-interest in sale of property	referred
3454	negligence in handling of case	referred
3455	unreasonable delay in getting results	referred
3456	delay on part of lawyers	explanation given
3457	expenses should be billed to insurance company	referred
3458	unsatisfactory representation	referred
3459	excessive fees and inadequate representation	referred
3460	unable to contact two lawyers re estates	referred
3461	dissatisfied with legal counselling re custody and visitation rights	referred
3462	did not receive explanation of a document	referred
3463	did not act promptly thereby unable to collect monies owing	referred
3464	undue delay in bringing suit to court	referred

3465	refused to return phone calls and keep client up to date on progress of case	referred
3466	dissatisfied with conduct of lawyer	referred
3467	delay in setting trial date	referred
3468	handled sale of house improperly	referred
3469	lawyer tricked client into paying out excessive mortgage procurement fee	inquiry made/referred
3470	lawyer's conflict-of-interest and breach of ethics	referred
3471	unsatisfactory representation	abandoned
3472	inability to make repayments on account of judgment	assisted resolution in favour complainant
3473	lawyer's improper conduct and legal aid problem	referred
3474	improper representation and excessive fees	referred
3475	client refused to pay for fees resulting from court's error	referred
3476	dissatisfaction with duties during a real estate transaction	referred
3477	inadequately represented and overcharged	referred
3478	lawyer delaying divorce proceedings	referred
3479	advice requested concerning legal position in attempting to recover losses associated with renting a house	referred
3480	lawyer charged too much for services	referred
3481	information requested - securing another lawyer	explanation given
3482	lawyer's incompetence in civil action	referred
3483	dissatisfied with action	referred
3484	representation poor	referred

3485 representation poor and fees high	referred
3486 unprofessional manner	referred
3487 dissatisfaction with services	referred
3488 not advised re capital gains tax on sale of house	referred
3489 misled at time of purchase of house	referred
3490 misinformed with respect to rights and obligations	inquiry made/referred
3491 innocent of charged offence - afraid lawyer would not prevent conviction	inquiry made
3492 exorbitant fees for inadequate services	referred
3493 unsatisfactory representation	referred
3494 delay in property transfer	referred
3495 improper handling of mortgage deal	advice given
3496 dispute over legal obligations re mortgage and tax payments	referred
3497 excessive fees	referred
3498 improper representation	referred
3499 unprofessional conduct	referred
3500 improper representation	referred
3501 delay in recovery of money	referred
3502 improper representation	referred
3503 delay in foreclosure action	referred
3504 inordinate delay in bringing dental malpractice suit to trial	referred
3505 improper representation	referred
3506 unsatisfactory services	referred

3507	delays and omissions in handling case	referred
3508	lengthy delays in dealing with contract problem	inquiry made/referred
3509	unsatisfactory legal work	referred
3510	assistance requested to sue lawyer	referred
3511	counsel refuses to release certain documents to client	referred
3512	little action on case for long period of time	referred
3513	professional misconduct alleged	referred
3514	conflict of interest on case, bill too high	referred
3515	incorrect advice resulting in financial loss	referred
3516	professional misconduct	referred
3517	delays in settlement of estate administered by public trustee	referred
3518	dispute over lawyer's bill	referred
3519	fee paid and case still unsettled	referred
3520	representation not up to par	referred
3521	lawyer's advice was incorrect - resulted in them being confined to jail and receiving an additional charge	referred
3522	poor handling of refinancing of house	referred
3523	very rude and poor at handling their house sale	referred
3524	dissatisfied with lawyer re real estate advice given transaction	
3525	very unhappy with lawyer's handling of his divorce case	referred
3526	insufficient faith in referral of new lawyer	referred

3527 professional misconduct alleged	referred
3528 professional misconduct alleged	referred
3529 poor advice resulted in conviction	referred
3530 delay in arranging bail hearing	inquiry made
3531 retention of important papers	referred
3532 only part of court award received	referred
3533 delays by counsel	referred
3534 negligent in handling case	referred
3535 refusal to appeal case	referred
3536 excessively high bill for interpreting a will	referred
3537 excessive legal fees	referred
3538 not properly represented at trial	explanation given
3539 mishandled family court case	referred
3540 cheated into selling property	inquiry made
3541 dissatisfied with advice	referred
3542 dissatisfaction with advice	referred
3543 dissatisfaction with advice	referred
3544 dissatisfied with performance	referred
3545 delay in estate settlement	advice given
3546 excessive fees	referred
3547 excessive fees	referred
3548 mishandling of loan transaction	referred

3549	unsatisfactory handling of estate settlement	referred
3550	lawyer neglectful and unconcerned	referred
3551	improper conduct alleged	referred
3552	excessive fees	referred
3553	discontinuance of court action without client's consent	referred
3554	delay in estate settlement	independently resolved in favour complainant
3555	improper representation	referred
3556	inadequate assistance	referred
3557	dissatisfied with service	referred
3558	refused assistance on grounds that it would be a waste of time bringing suit against federal government employee	referred
3559	improper handling of sale of property	referred
3560	unfair treatment - insurance matter	referred
3561	lawyer did not act in good faith	advice given
3562	misconduct and conflict-of-interest	referred
3563	delayed transferring the right to administer spouse's estate	inquiry made/referred
3564	exorbitant fee charged	referred
3565	unfairly treated - refused to answer calls	referred
3566	holding up process of completing the settlement of an estate	referred
3567	information request - lawyer knowledgeable of both Canadian and German law	referred

3568	improper representation	referred
3569	break-down in communication regarding appeal date	inquiry made
3570	improper representation	referred
3571	unsatisfactory representation	referred
3572	request for representation by certain lawyer	assisted resolution in favour complainant
3573	lawyer deducted his fee from mortgage funds channelled through his office, Law Society says practice is not unusual	referred
3574	levy against builder was overlooked by solicitor in house purchase	referred
3575	suspected improper behaviour in closing house purchase deal	referred
3576	lengthy delay in settlement of insurance case	referred
3577	poor handling of property transaction - outstanding mortgage later discovered	referred
3578	mismanagement caused loss of title deed to property	referred
3579	two lawyers negligent in their duties - divorce case	referred
3580	sister had bad experience - paid lawyer \$1,000	referred
3581	poor handling of real estate transaction	referred
3582	extremely dissatisfied with poor handling of case	referred
3583	negligent on her case	referred
3584	complaint against lawyers	referred
3585	poor handling of estate	referred
3586	negligence claim over accident case	referred
3587	dissatisfied with counsel	referred

3588 amount of bill for divorce \$300 higher than promised	referred
3589 improper title search	referred
3590 not handling case properly	referred
3591 dissatisfied with counsel	referred
3592 fees too high	referred
3593 improper representation	referred
3594 delay in divorce settlement	referred
3595 delay in estate settlement	referred
3596 difficulty in obtaining transcripts of trial	referred
3597 improper representation	referred
3598 mishandling of property transaction	referred
3599 delay in receiving money from sale of estate	referred
3600 improper handling of transaction and excessive fees	referred
3601 excessive fees	referred
3602 unsatisfactory services	referred
3603 excessive fees and mishandling of case	referred
3604 unidentified complaint	referred
3605 not available to discuss court case	inquiry made
3606 lost documentation	referred
3607 information request - legal advice	referred
3608 dissatisfaction with counsel	referred

3609	confusion about dates of court appearances	advice given
3610	miscarriage of justice	referred
3611	ineffective and unsuccessful in recovering money from employee	referred
3612	ignoring letters and phone calls	referred
3613	illegal operations by two lawyers	referred

From Report, op. cit., n. 102 above at pp. 398-407.

116. The following examples are typical:

Samuel John Grant and Joel Ronald Smith both of Toronto were found guilty of conduct unbecoming barristers and solicitors and disbarred. Each had been convicted of fraud and sentenced to a term of imprisonment.

Marvin Harold Malvern Stone of Toronto, was found guilty of professional misconduct and disbarred. He had misappropriated over \$50,000 from clients and failed to honour undertakings given to two solicitors.

Otto Alvin Ivany of Sault Ste. Marie was found guilty of professional misconduct. His rights and privileges are suspended for one year and for the next five years thereafter he will be permitted to practise only under the supervision of another member of the Society. During a period of extraordinary stress his books and records had fallen behind and a shortage of nearly \$5,000 had developed in his trust account.

(Communique, Number 72, 20 January, 1978)

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DISCIPLINE COMMITTEE - Mr. Lohead
Re: JAMES HEATLY PEARSON, Toronto

Mr. G. H. Lohead, Chairman, placed the matter before Convocation.

The reporter was sworn.

The solicitor did not attend. His counsel, Mr. P. T. Matlow, appeared on his behalf and confirmed that he was instructed to accept short notice of the consideration by Convocation of the Decision of the Discipline Committee dated 20th July, 1976. The Affidavit of Service of the Decision on the solicitor by Mr. Thomas Stephany on 20th July, 1976 was filed.

The Secretary read the Decision of the Discipline Committee wherein the solicitor was found guilty of professional misconduct, having misappropriated more than \$150,000 of clients' trust funds.

116. Cont'd...

It was moved and seconded that the Decision of the Discipline Committee be accepted.

Counsel for the solicitor made no submissions on his behalf. Counsel and the reporter withdrew.

The motion that the Decision of the Discipline Committee be accepted was carried.

It was moved and seconded that Convocation by Order disbar the solicitor and that his name be struck off the Roll of Solicitors and that his membership in the Society be cancelled.

Counsel and the reporter returned. Counsel was advised that the Decision of the Discipline Committee had been accepted by Convocation and of the motion respecting penalty before Convocation.

Counsel made no submissions on behalf of the solicitor.

Counsel and the reporter withdrew.

The motion that Convocation disbar the solicitor was carried.

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DISCIPLINE PROCEDURES- PREVENTIVE MEASURES

Mr. Lohead advised Convocation that the Society's preventive measures will be reviewed to determine why this series of defalcations was not detected by the former solicitor's accountants or the Society's mandatory reports on members' professional records.

(L.S.U.C. Minutes of Convocation, Volume 1, Number 4, pp. 79-80.)

117. See Bynoe, op. cit., Bibliography item 15, at p. 263.

118. As has been undertaken in respect of Ruling 14 violations: see n. 98 above.

119. March 1978, Law Society Gazette, 74 at pp. 75-76.

120. The Public Accountants Council (P.A.C.) and the relevant voluntary association (usually the I.C.A.O., and occasionally the C.G.A.A.O., or another voluntary accountants association.)

121. By-law 79(1), See Appendix II.

122. See description of the Service in Appendix II.
123. Figure V is from Appendix A to the Research Directorate's Staff Study, "History and Organization of the Accounting Profession in Ontario," p. 143.
124. In particular, Rule 206.2, reproduced in Appendix II.
125. Most of the descriptive material on pages 118-120 is paraphrased or taken verbatim from the Director-Ethics' (Peter Yardley) letter to the P.O.C. dated October 11, 1977.
126. See By-law 79(2) (Appendix II), and Report of the Appeal Committee Chairman, 1976.
127. Letter from I.C.A.O. to the P.O.C. dated August 6, 1976.
128. From Reports of Committee Chairmen, 1975-76.
129. Ibid.
130. Ibid.
131. See pp. 122-123 above.
132. The opportunity for review frequently arises when a trustee or receiver takes charge of the affairs of a former client of a later-accused accountant.
133. See pp. 27-30 above.
134. See text at n. 128 above.
135. Letter from P. Yardley of I.C.A.O. to P.O.C., October 11, 1977.
136. P. 127 above.
137. Letter from P. Yardley of the I.C.A.O. to B. Reiter, March, 1978.
138. See By-law 51.
139. Letter from Mr. T. Merrilees, former Executive Director of the I.C.A.O. to the P.O.C., August 6, 1976, p. 16.
140. See P.O.C.'s Client Survey-Accounting, Report (Ms. J. Myers), at pp. 36, 78, 79, 80, 81, 82, 83, and 93. The Fees Mediation Service is very new and it may become more widely known in future.
141. See Belobaba, op. cit., at pp. 26-27. The insurers do report aggregate claims information: see for instance Table 5 of Professor Belobaba's paper.
142. See Checkmark, February 1976.

143. The experimental monitoring scheme will be described fully in the study paper described in n. 28 above.
144. This matter is explored further in the subsection immediately below.
145. See s. 24, The Public Accountancy Act, Appendix III reproduces relevant sections of the Act and Rules made under it.
146. P.A.C. Annual Report, 1976-77.
147. See Table XII below and Table accompanying letter from P.A.C. to P.O.C. dated August 19, 1977 (showing enforcement statistics).
148. Re Stone and P.A.C., [1972] 3 O.R. 801; but see obiter contra in Re Moses and P.A.C., [1965] 1 O.R. 155. The legislative Committee of the P.A.C. would like the statute amended to provide clear jurisdiction for the imposition of less severe sanctions: See "History and Organization of the Accounting Profession" at p. .
149. P.O.C.'s Client Survey-Accounting, Report at pp. 83 & 103. Two thirds of the "familiar" medium-sized clients felt that the Act regulated quality of performance, as did the other half of the "familiar" large clients.
150. Steven Wilson's notes of a meeting with C. Doughty, P.A.C. Registrar.
151. The figures and estimates reported in this paragraph are from the following sources: letter from I.C.A.O. to P.O.C. dated June 10, 1977; letter from C.G.A.A.O. to P.O.C. dated December 28, 1977; and the "History and Organization of the Accounting Profession", n. 123 above.
152. Code of Ethics and Rules of Professional Conduct, s. 707. Relevant C.G.A.A.O. Code provisions are reproduced in Appendix IV.
153. See Table XIV below.
154. "History and Organization of the Accounting Profession", n. 123 above, at pp. 150-151.
155. Ibid., pp. 151, 153-154.
156. Ibid., at pp. 73-74.
157. See also "History and Organization of the Accounting Profession", n. 123 above at pp. 74-75 for limited discussion of activities of The Institute of Internal Auditors.
158. S. 3(3)(b). Relevant legislative material is reproduced in Appendix VI.

159. Information provided by Ken Sharp, Comptroller, A.P.E.O. Staff costs are included in the expenditure figures reported in the text above.
160. Appendix D to the Research Directorate's Staff Study, "History and Organization of the Engineering Profession," 1978, p. 268.
161. See, for example, A.P.E.O. Recommendation of the Practice and Ethics Committee: Dunnville Standpipe Failure and Collapse, February 13, 1976.
162. Interviews with Engineering Firm Personnel conducted for the Professional Organizations Committee (1977).
163. The Report of the Client Survey-Architecture and Engineering contained these questions and recorded the following distribution of answers.

Q. 37. Has your organization encountered major problems in its past involvement in bldg. design such as quality of design work, negotiation of fees, coordination of design, etc. IF SO, PLEASE BE AS SPECIFIC AS POSSIBLE. (IF NO PROBLEMS GO TO Q41)

A. Major problems

Response	Client type				
	(i)	(ii)	(iii)	(iv)	(v)
1. none	0	3	2	13	7
2. cost, time exceeded	0	1	0	0	2
3. co-ord. problems	0	2	0	1	3
4. design errors/omission	1	5	1	1	2
5. fee-quality problems	2	0	0	1	0

Q. 38 Were these problems encountered with an architectural, engineering or other firms offering design services?

A. Problems occurred with?

Response	Client type				
	(i)	(ii)	(iii)	(iv)	(v)
1. Arch.	3	9	1	4	6
2. Eng.	1	6	1	4	6
3. Other	0	0	0	2	1

Q. 39 How were these problems resolved?

A. Resolution

Response	Client type				
	(i)	(ii)	(iii)	(iv)	(v)
1. negotiation	0	4	0	0	2
2. connected by client	0	5	1	2	3
3. connected by consult.	1	0	0	0	1
4. termination of contract/ relationship	1	0	0	1	1
5. litigation	1	0	0	1	0

163. Cont'd...

Q. 40 Were you satisfied with the resolution?

A. Satisfied with resolution?

Response	Client type				
	(i)	(ii)	(iii)	(iv)	(v)
1. yes	3	4	0	0	3
2. no	0	1	0	2	1
3. partly	0	3	1	1	3
4. not yet resolved	0	0	0	1	0

164. Although in Case #1, the Engineer was re-admitted less than one year after expulsion.

165. Only about 6% of Engineering clients are individuals: see footnote 155 below.

166. Examples of outlines of such schemes are provided at pp. 241-242.

167. The Architects Act, s. 13, set out in full in Appendix VI.

168. By-law 7, Appendix VI.

169. The functions of the Professional Conduct Committee highlight certain inherent problems in the operation of the machinery of administrative tribunals. Notwithstanding the apparent determination of the members to be as fair as possible, questions arise as to the protections of natural justice which are afforded at this level.

In the first place the Committee is not formally empowered under the Act as an investigatory body but derives its power from the delegation of the power of Council. A general tenet of administrative law would hold that mere fact-finding and investigation is able to be delegated - up to a point - but it appears that the Committee goes further than mere fact-finding in its recommendation powers and its informal disciplinary procedures. A more serious objection lies in the potential denial of the elements of natural justice - the prohibition against legal counsel and other procedural protections afforded by the Statutory Powers Procedure Act - which should be assured if the Committee can be said to be performing a judicial or quasi-judicial function. Arguably, since it does recommend, and since the evidence adduced by the Committee can be used at the formal Board hearing and therefore used in a civil action by the complainant, there is a case to be made for more careful adherence to doctrines of procedural fairness.

The basic policy question that arises is the resolution of the conflict between two competing interests: the need for adequate procedural protections and the need for a preliminary screening process that is efficient and effective.

170. See p. 184 above.
171. See p. 188 above.
172. This memorandum was circulated to the entire O.A.A. membership.
173. See Table XX, pages 487-501 below.
174. See working paper by Professor E. Belobaba, op. cit., n. 22 above.
175. The P.O.C. Survey of Architecture and Engineering Firms revealed the following client-type distribution:

Distribution of Client Types
(% of all clients)

Client Type	Architectural Firms	Engineering Firms	Mixed Firms
1. Industrial and commercial companies	22	39	33
2. Real estate development companies	17	14	22
3. Non-profit institutions	12	3	7
4. Government (all levels)	21	21	23
5. Individuals	24	6	7
6. Architecture or engineering firms	2	13	6
7. Other-contractors	1	1	1
8. Other-mining corporations	0	1	0
9. Other-other	<u>2</u>	<u>2</u>	<u>1</u>
Total	100	100	100

176. See footnote 163 above.
177. The O.A.A. is a comparatively small professional organization. Its current membership is approximately 2,000.
178. Pages 1-3 above.
179. The truth of the proposition that professional responsibility is expected most here is demonstrated by noting that the almost exclusive focus of client complaints is upon competence matters.

180. McRuer, Bibliography item (g) General; Quebec's Professional Code Bibliography item (b) General; Ontario's Health Disciplines Act, Bibliography item (c) General; The Matas Committee Report, Bibliography item 38; O.L.R.C. Report, Bibliography item 33, at p. 203.
181. See, for instance, Government of Ontario Committee on the Healing Arts, Report, Vol. 3 (Ontario: Queen's Printer, 1970) at p. 70.
182. See, F. Maltman in 1977 Law Society of Upper Canada Special Lectures, at p. 109.
183. See the Law Society's response to the hypothetical cases put to it by the researchers: Intermediate Brief to P.O.C., No. 6, "Continuing Competence."

This Brief can be concluded with a comment on the hypothetical situations which are presented as raising issues about the extent to which the Society can or should discipline lawyers who appear to have made mistakes. Whether or not the facts as recited in these hypothetical cases actually amount to demonstrable error is not the point. The first three questions that follow the cases assume that a particular instance of failure to offer complete and accurate advice could constitute incompetence that should be dealt with by disciplinary action. This examination question type of approach may be adequate for the instruction of students but does not present the whole picture that must be considered when it is a matter of dealing with the reputation and livelihood of a practitioner. This is recognized by the two further questions, each of which is introduced by the phrase "Would the answer be different ...". The appropriate comment on these questions is to ask "what answer" and to remark that hypothetical questions and any answers that might be given to them add nothing to the statements of policy that have been enunciated on behalf of the Society in this Brief.

[At pp. 8-9 (C.37-C.38).]

184. I consider only these bodies for the remainder of this working paper. The role of other agencies (C.G.A.A.O., S.I.A.O., P.A.C., etc.) must be determined more generally by the P.O.C. before further consideration can be given to discipline by those agencies.
185. If the professional organizations are to determine the appropriate "mix" of competence-inducing techniques, the inability to deal with discipline in isolation from other techniques is self-evident.
186. Op. cit., Report I, Vol. 3 at pp. 1185-6.
187. Ibid., at p. 1186.
188. Ibid., at p. 1183 (a very frequently-quoted statement).

189. See pp. 485-488 of Tables below.
190. Op. cit., n. 186 above, at p. 1195.
191. Professional Code, op. cit.: s. 153; Health Disciplines Act, op. cit.: e.g. s. 60(5) re Medicine. The Health Disciplines Act contemplates payment to the Province. The Quebec Code is silent about the destination of fines. Other possibilities for their use are considered at p. 44 above.
192. The Professional Inspection Committee of Quebec's Chamber of Notaries has exercised its mandate by conducting about 600 practice inspections annually over the past two years. The Committee reviewed financial records and also verified the notaries' performances in rendering professional services. A number of disciplinary charges were laid in consequence of these inspections: Rapport du Comité d'inspection professionnelle (1976-77), 79 Revue du Notarial 46.
193. The 50-page report of the Matas Committee and an accompanying letter from the Director of Legal Studies of The Law Society of Manitoba (which explains its adoption by the Benchers and the status of implementation concerns) are on file at the P.O.C.
- The expected reaction of the Ontario Bar is predicted from that exhibited by the reaction to Matas in Manitoba. The Manitoba Branch of the Canadian Bar Association resolved that the Branch oppose the Matas recommendation "and express the opinion that the Standards Committee should not have the right to examine lawyers' files without the consent of the client". (November 26, 1977).
- The new authority of British Columbia Benchers (referred to in the text), is that granted by S.B.C. 1974, c. 49. The new legislation makes clear that the competence, as well as conduct, of practitioners is subject to scrutiny by the Benchers: See Law Society of Upper Canada, Intermediate Brief, No. 6, "Continuing Competence," Appendix at pp. C39-C42.
194. See e.g. Regulation 22.
195. Parry-Jones v. The Law Society and Others, [1968] 1 All E.R. 177 (C.A.).
196. Op. cit., e.g. s. 40(1) (Dentists), s. 50 (Doctors), and see, e.g. s. 64, which authorizes more general inspection powers.
197. E.g. McKeon, 1977 L.S.U.C. Special Lectures at p. 122. Justice, Complaints Against Lawyers, London, 1970, at p. 543. The Lay Observer's role and views are discussed more fully below.

198. S. 58(2)

The Committee in accordance with information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 62; or
- (b) direct that the matter not be referred under clause a; or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Part or the regulations or by-laws.

199. P. 236 above.

200. Op. cit., n. 186 above at p. 1166.

201. See for instance, H. Arthurs, Bibliography item 36, at p. 449.

202. The importance of access to such information is considered at pp. 258-265 below.

203. Such requirements are imposed on the College of Physicians and Surgeons by The Health Disciplines Act, S. 59.

204. The P.O.'s "publicity" and "adjunctive" functions are discussed below.

205. See s. 3(i)(b) of Health Disciplines Act. Sections 12(v), 15, 173, 175, 176, 177(c) of Professional Code.

206. See Appendix VIII, February 1978 Interim Report, at p. 10. (Appendix p. 105).

207. Appendix VIII (at Appendix p. 105).

208. Op. cit., s. 7(1).

209. Bibliography item (a) (General), at pp. 69-71.

210. The governing bodies of the legal profession in New Zealand and in a number of Australian states have such proposals under active consideration. Quebec's Office des professions, and Ontario's Health Disciplines Board partake of Lay Observer principles.

211. Appendix VIII, February 1978, Interim Report, (Appendix p. 105).

212. See especially the Quebec Professional Code and Ontario Health Disciplines Act (both), op. cit.

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O.A.A. Professional Conduct Committee Complaints, 1975	
TABLE XXI	502
Formal Complaints Before O.A.A. Registration Board 1971-1977	

IN THE INTEREST OF COMPLETE CONFIDENTIALITY,
CERTAIN DATA HAVE BEEN OMITTED FROM THE
PUBLISHED VERSIONS OF THE FOLLOWING TABLES.

APPENDIX A

TABLE I

LAW SOCIETY OF UPPER CANADA PUBLIC COMPLAINTS November 9, 1977 - December 9, 1977

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
1	November 9, 1977	Client	Partner in law firm	Delay in acting, implied lawyer paid off for not taking matter to court.	Litigation
2	November 9, 1977	3rd party other side	Sole practitioner	Alleged threat of criminal process in attempt to obtain civil remedy	Litigation
3	November 9, 1977	Creditor		Lawyer did not pay his bill - Law Society does not get involved in this kind of matter. It will not act as a collection agency.	Creditor
4	November 9, 1977	Other side of real estate transaction	Partner in law firm	Undertaking not fulfilled in relation to real estate transaction.	Real estate
5	November 10, 1977	Client	Partner in law firm	Lack of communication; delay.	
6	November 10, 1977	Client	Sole Practitioner	High fee in estate matter.	Estate
7	November 10, 1977	Client	Partner in law firm	Lack of communication; unsatisfied with the performance.	
8	November 10, 1977	Client	(Did not know)	Felt did not honour an agreement made with other side	Litigation
9	November 10, 1977	Client	Sole practitioner	Not received payment due from lawyer.	
10	November 10, 1977	Client		Too high fee - Law Society does not generally deal with this kind of complaint. The complainant is sent a letter informing him of his rights to tax the lawyer's bill and asks him first to contact the lawyer in question about the bill. The lawyer is sent the complainant's letter for comment.	

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
11	November 10, 1977	Lawyer	Sole practitioner	Alleged breach of trust.	
12	November 10, 1977	Lawyer	Sole practitioner	Lack of reporting to client - now suing lawyer as a result of his performance.	Litigation
13	November 14, 1977	Client		Fee too high; conflict of interest on matter	Real estate
14				No complaint re lawyer - just wants the process to move quicker to collect debt.	Litigation
15	November 14, 1977	Client	Sole practitioner	Estate matter complains too high fee \$62/hr.	Real estate
16	November 14, 1977			Complaint about legal aid--nothing to do with a lawyer.	
17	November 14, 1977	Client		Wants to change lawyers - has lost confidence	
18	November 14, 1977			Municipality complainant - did not like way lawyer was advising client (on opposite side) - not get into this unless allege something improper.	Litigation
19	November 14, 1977			Complaint by unsecured creditor of bankrupt lawyer asking for information - bankrupt lawyer is disbarred.	Creditor
20	November 14, 1977	Client		Complaining about his lawyer dropping the case in the middle of a lawsuit.	Litigation
21	November 14, 1977	Client		Unsatisfactory performance.	
22	November 14, 1977	Client	Partner in law firm	Delay.	
23	November 14, 1977			Complaint about legal aid.	

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law.
24	November 14, 1977	Client		Delay in acting while keeping his retainer	Litigation
25	November 14, 1977	Client		Says lawyer failed to follow instructions.	
26	November 14, 1977	Client		Delay in estate matters.	Estate
27	November 14, 1977	Client	Partner in law firm	Dissatisfaction in real estate matter. Lawyer gave undertaking to get work orders removed; also complains lawyers are withholding files until account is paid.	Real estate.
28	November 14, 1977	Client		In real estate transaction lawyer missed a lien registered against property.	Real estate
29	November 14, 1977	Client wrote newspaper		Law Society will not forward information to the paper - will treat the complaint like any other. Contact the lawyer - here client complained about lawyer's performance in a real estate transaction - deal did not close because of outstanding liens.	Real estate
30	November 14, 1977	Client	Partner in law firm	Delay	
31	November 14, 1977	Client	Partner in law firm	Feels lawyer did not carry out his instructions wanted him to go to court - refused.	Litigation
32	November 14, 1977	Client		Refused to turn over company books until account paid.	Corporate
33	November 15, 1977	Client	Partner in law firm	Negligence on real estate transaction.	Real estate.
34	November 15, 1977	Lawyer		Breach on an escrow arrangement concerning a real estate transaction.	Real estate

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of law.
35	November 15, 1977	Client		Delay	
36	November 15, 1977	Client		Complaint about negligence in real estate matter. Wants Law Society to get dollars lost.	Real estate
37	November 15, 1977	Doctor		Complaint about lawyer not paying for a medical report regarding one of his clients.	Creditor - R. 32*
38	November 15, 1977	Doctor		Not paid for medical report	Creditor - R. 32
39	November 15, 1977	Doctor		Not paid for medical report.	Creditor - R. 32
40	November 17, 1977	Government Department	Sole practitioner	Lawyer sent cheque in for certification of	Creditor - R. 32
41	November 17, 1977	Lawyer	Lawyer	Real estate matter - gave on closing an undertaking to register a discharge of a mortgage which has not been done.	Real estate.
42	November 17, 1977	Husband	Sole practitioner	Money from sale of matrimonial home held in trust by wife's lawyer - lawyer not turning over husband's share - was a fire in house before it closed and the husband has been charged with arson.	Family law.
43	November 17, 1977	Client	Partner in law firm	Delay in real estate matter - client had applied for AHOP assistance - paper had to be signed by lawyer - not done so client loses the assistance until this is completed.	Real estate
44	November 17, 1977	Government Department	Sole practitioner	Cheque for certification of incorporation returned N.S.F.	Creditor - R. 32.
45	November 17, 1977	Lawyer	Partner in law firm	Delay in acting on litigation matter.	Litigation.

* See Appendix at back of Chart.

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law.
46	November 17, 1977	3rd party	Partner in law firm	Complainant signed agreement dealing with the construction of a house with client of lawyer. The agreement was prepared by client's lawyer. Agreement provided for some money being withheld by lawyer in trust on completion of the house for defects - client instructed to release funds but lawyer took off some for his legal fees - complainant says not responsible for the legal fees as he was never client of the lawyer.	Real estate
47	November 17, 1977	Lawyer	Lawyer - Gov't	Complainant lawyer suddenly taken ill and taken to hospital night before an appeal - had client ask the federal prosecutor for an adjournment but was refused and client was forced to present his own case.	Litigation
48	November 17, 1977	Client	Partner in law firm	Family law - lack of communication -- wants return of marriage certificate.	Family law.
49	November 17, 1977	Client	Partner in law firm	Delay in settling estate.	Real estate.
50	November 18, 1977	Relative		Complained that lawyer prepared a power of attorney without seeing that it was properly executed or explaining the purpose of the document to his elderly client who would be signing it. Seems to be a family squabble behind it.	Commercial
51	November 18, 1977	Client	Sole practitioner	Delay in estate matter.	Estate
52	November 18, 1977	Client	Sole practitioner	Delays in closing real estate transaction	Real estate.
53	November 18, 1977	Client	Lawyer	Real estate - complaining re fees charged for settling a boundary dispute.	Real estate

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of law
54	November 21, 1977	Client	Partner in law firm	Never returns telephone calls, does not know what is going on.	Litigation
55	November 21, 1977	Creditor	Partner in law firm	Land surveyor complaining about unpaid bill.	Real estate
56	November 21, 1977	Client	Sole practitioner	His lawyer failed to perfect his appeal so dismissed as abandoned - lawyer failed to turn over files to new lawyer.	Litigation
57	November 21, 1977	Client	Partner in law firm	Failed to return file.	
58	November 21, 1977	Partner in law firm	Partner in law firm	Money owing to complainant's client from a real estate transaction has not been sent despite repeated requests.	Real estate
59	November 21, 1977	Partner in law firm	Partner in law firm	Failed to comply with undertaking in real estate transaction.	Real estate
60	November 21, 1977	Creditor	Partner in law firm	Mortgagee complaining the lawyer mortgagor is not making his payments.	Creditor
61	November 21, 1977	Client	Lawyer	Delays in reaching settlement in family law matter.	Family law
62	November 21, 1977	Client	Sole practitioner	Lack of action - dispute with City re placement of fence and light contrary to by-laws - her lawyer has done nothing about it.	Litigation.
63	November 21, 1977	Third party	Partner in law firm	Criminal matter - assault on complainant's son Lawyer for accused tried to get complainant to drop the charges - said would pay medical expenses if did.	Criminal
64	November 21, 1977	Lawyer	Partner in law firm	Real estate transaction - failed to honour undertaking for three years	Real estate

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
65	November 21, 1977	Client	Partner in law firm	Real estate - lawyer acted for both sides - paid too much to vendor. Vendor did not pay taxes; purchaser wants money back.	Real estate
66	November 21, 1977	3rd party		Real estate - not complied with undertaking.	Real estate
67	November 21, 1977			Entirely incomprehensible letter	
68	November 21, 1977	Client	Partner in law firm	Motor vehicle litigation - changed lawyers - will not transfer file to new lawyer.	Litigation.
69	November 21, 1977	Beneficiary		Estate matter - letter complaining about the long drawn out process in getting estate passed.	Estate
70	November 21, 1977	Client	Partner in law firm	Litigation matter - says lawyer has misused his money. Client had paid money into court - not lawyer's trust fund; client seems confused about this.	Litigation
71	November 21, 1977	Client-beneficiary	Lawyer	Estate matter - long delays in getting estate passed. Will not release will to complainant.	Estate
72	November 21, 1977	Lawyer - partner in law firm	Partner in law firm	Lawyer tried to enforce collection of debt directly from the client of the complainant lawyer	Litigation
73	November 21, 1977			Numerous documents in envelope no covering letter at all - no indication as to nature of complaint - incomprehensible.	
74	November 22, 1977	Partner in law firm	Partner in law firm	Requesting the view of Law Society respecting certain disbursements in real estate matters - search treated as disbursement.	Real estate
75	November 22, 1977	Client	Sole practitioner	Changed solicitor - wants his file.	

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of law
76	November 22, 1977	Partner in law firm	Member of the public	Real estate - appears someone (not a lawyer) told complainant's client title good - took their advice and paid for the house when no deed was ever registered.	Real estate
77	November 22, 1977	Client	Sole practitioner	Paid for property but no deed.	Real estate.
78	November 22, 1977	Client	Partner in law firm	Concerned about fee for negotiating settlement with respect to family home.	Family law
79	November 22, 1978	Other side of transaction	Sole practitioner	Failed to provide discharge of mortgage for some months.	Real estate.
80	November 22, 1977	Beneficiary	Sole practitioner	Estate matter - complaint about the delay and fee charged. Did not let beneficiaries know lawyer kept large share of executor's fees, they thought brother (executor) had received it.	Estate
81	November 23, 1977	Beneficiary	Sole practitioner	Estate, delays in getting matter settled; unhappy with executor's handling.	Estate
82	November 23, 1977	Client	Sole practitioner	Litigation arising out of a real estate transaction. Complaints of delays in doing anything, incompetence - letter itself very jumbled.	Litigation
83	November 23, 1977	Mortgagor		Refinancing house, lawyer for mortgage company wants new survey but complainant does not want to pay so will go elsewhere - wants property documents back but lawyer will not release them.	Real estate
84	November 23, 1977	Client	Partner in law firm	Litigation matter; Legal Aid; nothing done but run up bills - defendant going out of business - lawyer won't seize assets without client posting a bond.	Litigation

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
85	November 24, 1977	Client	Sole practitioner	Negligence litigation against doctor - lawyer wants larger retainer - client says not informed of the costs involved at the beginning.	Litigation
86	November 24, 1977	Holder of mechanic's lien	Lawyer - partner in law firm	Mechanic's lien registered, property sold but not received any money yet - why the long delay.	Litigation
87	November 24, 1977	Government Department for court reporter	Sole practitioner	Not paid for transcript ordered.	Litigation.
88	November 24, 1977	Client	Sole practitioner	Failure to follow client's instructions - plumbing went wrong before closing - lawyer failed to hold back money or get undertaking re plumbing repair.	Real estate
89	November 24, 1977	Client	Sole practitioner	Too high fees - won't give back retainer and no account sent - also said failed to follow client's instruction re corporate name he wanted.	Corporate Litigation
90	November 24, 1977	Doctor	Partner in law firm	Completed a psychiatric report on lawyer's client. Lawyer not paid for report.	Litigation
91	November 24, 1977	Client	Partner in law firm	Divorce - No communication since May	Family law.
92	November 24, 1977	Other side	Partner in law firm	Complainant owed money to the client of accused. Default judgment signed when complainant said there was an arrangement between him and the accused lawyer not to proceed on the action.	Litigation
93	November 25, 1977	Special examiner	Partner in law firm	Not paid for transcripts.	Litigation.

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
94	November 25, 1977	Client	Sole practitioner	Complained about inaction on his case - lawyer had no tape recorder to play tapes which the client said were slanderous of him and failed to acquire one promptly as a result he has lost valuable time - letter is not very clear.	Litigation
95	November 28, 1977	Real estate agent	Sole practitioner	Real estate agent wants his commission.	Real estate.
96	November 28, 1977	Partner in law firm	Sole practitioner	Cheque from lawyer returned N.S.F. and after informing him he has not had it replaced.	Creditor - R. 32
97	November 28, 1977	Doctor	Partner in law firm	Lawyer for wife wants to find out about husband's addition to alcohol from husband's doctor. Doctor says it is privileged and needs the husband's consent.	Family Law
98	November 28, 1977	Client	Sole practitioner	Lent money to a lawyer worried about it now that lawyer's having marital problems.	R. 14.
99	November 28, 1977	Real estate agent	Partner in law firm	Real estate matter - lawyer withholding commission wrongfully.	Real estate
100	November 28, 1977	Partner in law firm	Partner in firm	Real estate matter, failed to provide discharge of mortgage since March, 1977 - doesn't reply to letters or calls.	Real estate
101	November 28, 1977	Lawyer - sole practitioner	Partner in law firm	Writ issues against complainant - complainant says he doesn't know what the claim is about	Litigation
102	November 28, 1977	Client		Letter jumbled - claim for accident on car and at work - unhappy with his lawyer's progress.	Litigation
103	November 29, 1977	Third party	Sole practitioner	Wife was separated from husband. Husband's lawyer entered an appearance in an action on behalf of both husband and wife even though he knew they were separated.	Litigation

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
104	November 29, 1977	Client	Partner	Matrimonial action, feels some of the advice this lawyer gave him was wrong and let things lag too long - also failed to respond to his numerous calls and letters.	Family law
105	November 29, 1977	Client	Sole practitioner	Motor vehicle accident - can't contact his lawyer since May.	Litigation
106	November 29, 1977			Incomprehensible letter - writer appears mentally ill.	
107	November 29, 1977	Client	Partner	Said got too high bill for separation agreement On motor vehicle accident - letting his student handle it when client specifically asked her lawyer not to.	Family law and Litigation
108	November 29, 1977	Defendant	Partner	Motor vehicle accident - appears that complainant's licence may be suspended for failure to pay judgment - complainant feels plaintiff's lawyer misled the court in some way.	Litigation,
109	November 29, 1977	Client	Partner	Not sent deed, asked many times.	Real estate
110	November 29, 1977	3rd party	Partner	Owed money on Chargex - made deal with lawyer for collection agency to make monthly payment and has kept up payments - doesn't see why she has to pay now court costs - also interest rate unfair.	Litigation
111	November 29, 1977	Client	Partner	Real estate transaction - worried about the status of the sale transaction - no report from lawyer.	Real estate
112	November 29, 1977	Prisoner		Says lawyer agreed to write letter to parole board but nothing done. Letter writer seems quite mentally unbalanced.	Criminal

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
113	November 29, 1977	Beneficiary	Partner	Estate matter, promised would receive money in June - nothing yet (problem seems to be the necessity of having the court pass the accounts - originally it was thought this would not be necessary)	Estate
114	November 29, 1977			Not a complaint about a lawyer - complains about unhappy state of the country - writer appears mentally ill.	
115	November 30, 1977	Client	Partner	Divorce-initially wrote Law Society with complaint that account too high (\$200 more than originally quoted) - Account was taxed. Garnishment followed - complainant feels she should have been warned of garnishment prior to it being put in her employer's hands.	Family Law
116	November 30, 1977	3rd party	Partner	Peculiar situation, complainant says someone put a piece of property into his name without his knowledge - money is owing on the mortgage so accused law firm has started foreclosure proceedings.	Real Estate & Litigation
117	November 30, 1977	Corporate client	Partner	Client doesn't feel should have to pay. Had name of magazine registered as trade mark by solicitor. Turns out after mark has been registered he cannot use it as there is a company with that name in a similar business. Negligence.	Industrial property.
118	November 30, 1977	Client	Sole practitioner	Hired lawyer for adoption and immigration matter, gave \$200 retainer, some mixup as to the Court she was to attend and other mishandlings, solicitor had her removed from his office. Client wants her money back.	Family law

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
119	November 30, 1977	Client	Partner	Feels lawyer's fee too high for services rendered.	Criminal Litigation
120	November 30, 1977	Client	Sole practitioner	Real estate transaction, not got documents yet, many requests.	Real estate
121	November 30, 1977	Solicitor	Partner	First lawyer couldn't get instructions so moved to have himself removed from record - Client wants retainer back (\$100) as felt lawyer didn't do anything.	Litigation
122	November 30, 1977	Client	Partner	Complainant says he was acting on his own behalf in real estate matter therefore not responsible for Solicitor's fees. Solicitor garnished complainant's bank account for amount of the account - Client took matter to court, complainant says he won but lawyer appealed - complainant wants the money paid into court back. Lawyer he hired for appeal hasn't done anything. Won't answer calls, etc.	Real estate
123	November 30, 1977	Client	Partner	Negligence - wanted building for specific use, says lawyer knew this, after deal closed found out can't be used commercially - claims wouldn't have bought building if knew this.	Real estate
124	December 1, 1977	Executor	Partner	Feels been overcharged on estate matter - has very small estate and after Solicitor's fee very little left.	Estate
125	December 1, 1977	Client		Doesn't mention any lawyer's name, has loaned money to someone who won't pay. Feels her court action going too slowly.	Litigation
126	December 1, 1977	Mortgagor	Partner	Mortgagor behind in his payments - he objects to paying for legal fees of mortgage's lawyers and costs on previous sale proceedings - Writer is confused, thinks he is enclosing a copy of the mortgage when in fact it is a notice of sale.	Real Estate - Litigation

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
127	December 1, 1977	3rd party	Sole practitioner	Complainant received notice of revocation of a power of attorney from lawyer. Lawyer informed complainant that if he did anything under the revoked power of attorney he would be held criminally and civilly liable. Complainant objects to threatening letter.	Commercial
128	December 1, 1977	Solicitor	Partner	Lawyer for Bank complaining about lawyer for assignor of a debt not paying money over to the bank assignee when that money was received. The lawyer had signed an acknowledgement that he agreed to pay the money to the Bank assignee when it was received - the lawyer took the position he had not given a personal undertaking and had to follow his client's instructions.	Commercial Corporate
129	December 1, 1977	Client	Sole practitioner	From proceeds of sale lawyer was to pay off Bank (execution registered) Client says Bank didn't receive all the money the lawyer indicated he paid to the Bank. Client asked for explanation but received nothing in ten months.	Real estate
130	December 2, 1977	Client	Partner	Feels charged too much for services rendered - appears accused failed to appear for adjournment and trial date - seems some lack of communication.	Criminal
131	December 2, 1977	3rd party	Sole practitioner	Lawyer sent letter to creditor of his client outlining a "proposal to Creditors". The creditor felt that this meant it would receive the amount suggested in the letter right away. There is a lack of understanding about what a proposal to creditors is.	Corporate Commercial
132	December 2, 1977	3rd party	Sole practitioner	Complained about the grounds for divorce in wife's petition - says they are untrue. His wife said her lawyer wanted them that way.	Family law.

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
133	December 2, 1977		Partner	Unclear what is problem. Appears invested money on the security of a chattel mortgage and property has been seized by a bank - wants legal advice	Litigation
134	December 2, 1977	Beneficiary	Partner	Estate matter - slow, sloppy handling	Estate
135	December 2, 1977	Lawyer		A client of complainant lawyer informed him that real estate agent gave him name of lawyer who doesn't charge too much.	Advertising
136	December 2, 1977	Lawyer	Sole practitioner	Lawyer for wife says company controlled by husband's lawyer purchased from the husband a property while that property was the subject of a matrimonial property dispute.	Family law
137	December 2, 1977	Solicitor	Partner	Lawyer for plaintiff said accused was holding money pending the settlement of a court action. Now accused has failed to account for this money and fails to answer correspondence.	Litigation
138	December 2, 1977	Beneficiary	Sole practitioner	Estate matter - can't understand the delay in settling mother's estate-mother died 1974	Estate
139	December 2, 1977	Client	Partner	Real estate transaction, quoted fees - now charged much more than quote.	Real estate
140	December 2, 1977	Beneficiary	Partner	Lawyer was to administer trust in will until complainant was 25. Complainant has received major portion of his share but wants a final accounting. He has been over 25 for 2 years.	Estate
141	December 2, 1977	Client		Confusing letter - unclear if he is complaining about a lawyer or not. Was in car accident in 1973 and says still hasn't got his settlement.	Litigation

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
142	December 2, 1977	Client	Partner	Criminal litigation. Unhappy with outcome, lawyer didn't interview him or prepare his case just agreed with the Crown at trial.	Criminal
143	December 2, 1977	Client	Sole practitioner	Real estate transaction didn't close - lawyer wouldn't certify title - complainant objects to being charged for deal that didn't close.	Real estate
144	December 5, 1977	Sole practitioner	Partner	Lawyer sent letter to complainant's client saying he was only paying for part of the cost of a move indicating the client wouldn't want all the circumstances about the move to be voiced in a court of law. Apparently someone was smoking marijuana on the job. Complainant felt letter was threatening to his client.	Litigation
145	December 5, 1977	Husband	Sole practitioner	Complaining about letter from wife's lawyer explaining they were denying him all further access to his son because of some improper behaviour by the child of his common law wife. towards the son.	Family law
146	December 5, 1977	Sole practitioner	Partner	Said lawyer crossed out one name and substituted another on a transfer without the complainant's lawyer's consent. As a result the purpose of his client's action is defeated.	Litigation
147	December 5, 1977	Client	Sole practitioner	Motor vehicle accident in - says lawyers get facts mixed up as to injuries of the 3 girls in the accident, loses papers and requires client to deliver letters, etc. The client has given no retainer and doesn't want to pay for translations, etc. until settlement. The lawyer says he won't act unless she does.	Litigation
148	December 5, 1977	Client	Partner	Confusing letter - seems client is unhappy with the performance of her lawyer - didn't follow her instructions to foreclose the "worthless" mortgage, lost her papers. Alleges some people in are conspiring "to deprive me of my property".	Real estate

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
149	December 5, 1977	Client	Sole practitioner	Complainant bought mortgage through the lawyer. The security was not as good as the lawyer represented it was.	Real estate
150	December 5, 1977	Client	Sole practitioner	Gave \$150 retainer. Became unhappy with performance of lawyer in pursuing law suit so discharged him. He has not returned retainer or sent an account.	Litigation
151	December 5, 1977	Client	Sole practitioner	Lawyer worked for mortgagor and mortgagee - said lent money on security of mortgage, lawyer gave erroneous value for 1st and 2nd mortgage. Also loan was to be guaranteed but never received guarantee.	Real estate
152	December 5, 1977			Letter complaining but no lawyer mentioned. Letter implies complainant has a judgment but nothing being done about it.	Litigation
153	December 5, 1977	Client		Very bitter letter about lack of satisfaction she has received from the courts and lawyers over the last 5 years.	Family law
154	December 5, 1977	Sole practitioner	Partner	Lawyer for husband complaining because wife opened letter from him to husband and now wife's lawyer is using this confidential letter on a motion.	Family law
155	December 5, 1977	Client	Sole practitioner	Got a mortgage through a lawyer. Arrears were to be paid off before the money was advanced, not done. Conflict of interest - lawyer acting on foreclosure proceedings for both sides. Discharged lawyer but wants return of papers.	Real estate
156	December 5, 1977	Client		Lawyer never answers correspondence - client asks whether it is a lawyer's duty to inform his client of a bad business deal before he purchases it.	

Case No	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
157	December 5, 1977	Real estate agent	Partner	Lawyer had complained to government department about complainant's behaviour. A court action resulted, the complainant feels the court evidence indicates that the information provided by the lawyer to the Ministry was misleading and unauthorized by his client.	Litigation
158	December 5, 1977	Real estate agent	Sole practitioner	Can't contact solicitor for purchaser for closing real estate transaction.	Real estate
159	December 5, 1977	Client	Partner	Bought property, a mechanic's lien registered on it. Client had to apply to court to have it declared invalid. Client feels she shouldn't have to pay for this. Wants to be reimbursed for her trouble.	Real Estate Litigation
160	December 6, 1977	Client	Partner	Says he is owed \$50 by the lawyer. Was her lawyer on a family law matter but complainant discharged him. Asked for money back in June 1977 but only got part of it. There is an account from the lawyer for the remaining \$50 enclosed in complaint letter.	Family law.
161	December 7, 1977	Client	Sole practitioner	Client gave \$200 retainer for personal injury case. Client hasn't been able to contact lawyer for 16 months.	Litigation
162	December 7, 1977	Solicitor	Sole practitioner	Lawyer for vendor has failed to register discharge of mortgage - undertook to do so at closing on August 2nd.	Real estate
163	December 7, 1977	Client	Sole practitioner	Bought a house - arrears in mortgage were not all paid up at closing so mortgagor is being asked to pay them.	Real estate

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
164	December 7, 1977	Client	Sole practitioner	Feels lawyer is cheating him. There was a condition in Agreement of Purchase that vendor fix certain things. Lawyer is encouraging client to close even though the work has not been done. Also there are some problems with mortgage arrears.	Real estate
165	December 7, 1977	Client	Sole practitioner	Client purchased a condominium apartment in 1976. To date client has received no statement of adjustments, just a deed to their suite. Client is asking Law Society whether they are entitled to interest on their money from the time of paying it until they received their deed.	Real estate
166	December 7, 1977	Vendor	Sole practitioner	Sold a cottage property - his lawyer acted for both sides. Vendor says he still hasn't got his money although the Purchaser said he paid the lawyer.	Real estate
167	December 8, 1977	Client	Partner	Accident litigation. Complainant says there has been no contact with her lawyer since early September despite numerous letters. Client says a judge told her to complain to Law Society.	Litigation
168	December 8, 1977	Creditor	Partner	Outstanding account from August for court reporting still unpaid by law firm.	Creditor - Ruling 32
169	December 8, 1977	Creditor Company	Sole practitioner	Lawyer issued N.S.F. cheque to complainant company for 2 airplane tickets. Client said it relied on fact lawyer was a Q.C.	Creditor
170	December 8, 1977	Court reporter	Partner	Freelance reporter hasn't been paid for transcript since October, 1977. Invoice for over \$900	Creditor - Ruling 32

Case No.	Date	Complainant and Location	Accused and Location	Nature of Complaint	Area of Law
171	December 9, 1977	Client	Partner	Unhappy with the preparation for the trial on drug charge and possession of gun and counter-felt money. Client said lawyer refused to interview a witness in who could support his story and also lawyer failed to interview him fully. Client said the lawyer let out in his cross-examination of a police officer that a gun was involved in the arrest (trial for drug possession was held separately) thereby prejudicing his case before the jury.	Criminal Litigation

SUMMARY

TOTAL COMPLAINTS:	1977	1570
	(1976	1587)
Sample (November 1977)	n=171	

Number of complaints by fields of law subject to complaint

Complainants:	Lawyers	= 23	Accused:	Sole practitioners	= 52	Nature of Complaint:	Real estate	= 46
	Business	= 4		Partners	= 72		Litigation	= 47
	Creditors	= 13		Unknown	= 47		Creditor	= 12
	Client	= 86					Family Law	= 15
Locality of Complainant	Other	= 45					Other	= 27
	Toronto	= 72	Locality of Accused:	Toronto	= 94	Matters dealt with delays, lack of any progress, lack of communication with lawyer		
	Other	= 82		Other	= 51			
	Unknown	= 17		Unknown	= 26			
						Morally improper conduct by the lawyer		
						Lawyer's fee too high		
						Lawyer owes money		
						Incomprehensible letters from Unstable persons		
						Other		

TABLE I
APPENDIX

Professional Conduct Handbook

Ruling 32

DUTY TO MEET FINANCIAL OBLIGATIONS

To maintain the honour of the Bar members have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken on behalf of clients unless before incurring such obligations the lawyer concerned clearly indicates in writing that he, or she, is not prepared to meet the obligation personally.

Generally, members have a professional duty to meet financial obligations in relation to their practice, including prompt payment of the deductible under the Society's Errors and Omissions Insurance Plan when properly called upon to do so.

Ruling 7

SOLICITORS' UNDERTAKINGS

Personal liability of solicitor

Undertakings when exchanged between solicitors are a matter *uberrimae fidei*. They should be written and unambiguous in their terms. If a solicitor giving an undertaking does not intend to accept personal responsibility, he should state this expressly and quite clearly in the undertaking itself. In the absence of such a statement the person to whom the undertaking is given should be deemed to expect that the giver will honour it personally.

Thus the use of such words as "on behalf of my client" or "on behalf of the vendor" do not relieve the solicitor giving the undertaking of personal responsibility.

Ruling 14

BORROWING FROM CLIENTS AND INVESTING CLIENTS' MONEY

Failure to observe governing principles is professional misconduct

On the recommendation of the Discipline Committee the following statement by Convocation was published in the Ontario Report for June 7, 1963.

It is a matter of grave concern to Convocation that in a number of instances of professional misconduct on the part of Solicitors, in relation to the misuse of trust funds or the improper obtaining of monies, the borrowing of money by the Solicitors in question from clients has been a factor leading to the professional misconduct involved. In some instances the monies have been borrowed from the client without any security, other than the promissory note of the Solicitor. Usually the money was borrowed from the client for the purpose of being re-invested by the Solicitor for his own profit. This practice, of course, must be carefully distinguished from the normal and traditional function of the Solicitor in placing funds left with the Solicitor on trust to be invested on behalf of the client. In performing such function the Solicitor is in no way personally involved in the transaction and providing that he acts without negligence in investing the funds of the client, obtains the security bargained for by the client, and makes a full and accurate report to the client, he incurs no personal liability.

The relationship existing between a Solicitor and his client is a fiduciary one and no conflict between his own interest and his duty to his client can be permitted to exist.

Convocation expresses the following views on the subject for the guidance of the Profession:

1. A Solicitor should not borrow money from his clients save in exceptional circumstances, and in that case the onus of proving that the client's interests were fully protected by the nature of the case or by independent advice will rest on the Solicitor.
2. In transactions in which the client's funds are invested in a security in which the Solicitor has a personal interest,

either direct or indirect or through a Corporation or Syndicate in which the Solicitor has a substantial or controlling interest, the fullest disclosure must be made to the client in writing and the client must be represented by an independent Solicitor in the transaction.

3. Whether a person lending money to a Solicitor on his own account or investing funds in a security in which the Solicitor has an interest is to be considered a client within the above principle, is to be determined having regard to all the circumstances. If the circumstances are such that the lender or investor might reasonably suppose that he was entitled to look to the Solicitor for guidance and advice in respect of the loan or investment, then the Solicitor should consider himself bound by the same fiduciary obligation that attaches to a Solicitor in dealings with a client.

In accordance with the above statement, Convocation hereby notifies the profession that any failure to observe the principles above referred to by a Solicitor is, in general, professional misconduct and will be dealt with accordingly.

Convocation also wishes to draw to the attention of the profession that the giving of independent advice by a Solicitor to a lender or investor in the above circumstances, once undertaken, imposes a high duty on the Solicitor giving such independent advice and is an undertaking not to be lightly assumed or merely perfunctorily discharged.

The above statements do not purport to be exhaustive. The attention of the profession is called to the numerous reported authorities as to the duty of the Solicitor to his client and the various transactions and dealings that the courts have held to be improper or reprehensible conduct in violation of these principles, and which, in addition to their consequences at law, constitute professional misconduct.

TABLE II
LAW SOCIETY OF UPPER CANADA
COMPARATIVE STATEMENT OF FINAL COUNT OF DISCIPLINE COMPLAINTS BROKEN
DOWN INTO VARIOUS CATEGORIES

For the Twelve Months ended December 30, 1977

New Categories (7) first introduced in 1976:	1977	1976	Recount 1976	1975
Real Estate	405	644	530	
Corporate Commercial	25	62	54	
Estates	130	174	172	
Criminal	35	47	48	
Litigation	285	255	341	
Family Law	139	175	206	
Other areas of law not encompassed by above	80	79	77	
Old Categories retained:				
Referred to Benchers	68	56	82	29
Communication - Failure to properly explain	224	174	287	235
Delay with justification	95	236	200	150
Delay without justification	145	261	153	217
Fees - complaints about fees	158	186	257	158
Law (1) Solicitor's Negligence	69	74	113	66
(2) Any other question of law	224	333	338	285
Misrepresentation	8	23	22	14
Complaint not represented by solicitor complained of and needs to be advised of rights; Complainant ad- vised to ascertain his rights	47	95	78	47
Complaints from lawyers against other lawyers	105	83	129	64
Rule 32 Unpaid accounts - failure to pay debts incurred to public officials, agency accounts and other lawyers		53	51	27
Rule 32 Duty to meet financial obligations	53	53	52	nil
Rule 7 Failure to honour an undertaking	21	10	29	7
Rule 14 Borrowing from clients and investing clients' money	5	2	1	nil
Passed away	70	85		nil
Lending money to a client	nil	nil		nil
Legal aid matter	10	22	16	8
No basis for complaint	190	137	231	162
TOTAL INDEXED COMPLAINTS	2591	3559	3467	1469

1974 1149
1973 1164
1972 1110
1971 1013

NOTE: Some complaints are indexed under more than one heading: The actual number
of individual complaint letters received was: 1977 1510
1976 1587

TABLE III
LAW SOCIETY OF UPPER CANADA RANDOM SAMPLE OF CLOSED FILES INDEXED UNDER HEADS INDICATED ON CHARTS (1975-1977)
CHART A - NO BASIS FOR COMPLAINT 1977 n=190

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
1	Client	Partner - 5	1958 8 other complaints	Litigation. Business Deal between the complainant and 3 other people for the purchase of stock. The lawyer drew up the contract for the transfer of shares and a partnership agreement between 2 of them. Later on the deal turned sour and complainant lost considerable money. Complainant wants to know if it is unethical for a lawyer to represent all 3 of them. Lawyer said when he was contacted the arrangements had already been agreed to and he was asked simply to carry them out on behalf of all parties. He said he did point out to all parties the possible difficulty in acting for all sides and in spite of this they urged him to do so.	No basis for complaint found.
2	Client	Partner - 6	1955 10 other complaints	Litigation - Complainant involved in accident with street car. He says he is totally disabled but didn't receive enough for his monetary loss because his lawyer didn't adequately represent him in court. The lawyer enclosed the reasons for Judgment. It appears the judge did not believe the complainant on several points. Judge felt he didn't prove the total loss that he claimed.	No basis for complaint found. Invitation on other matter - partnership dispute. Law Society told client that it can't interfere with a decision of the courts. Law Society said could find no professional misconduct. Lawyer noted client hadn't paid his account.
3	Doctor	Partner	1969 6 other complaints	Doctor did psychiatric assessment on one of lawyer's clients but hasn't been paid yet. Lawyer replied enclosing a letter to Legal Aid requesting the funds for the doctor. Later a letter from the complainant stating he had been paid.	No basis for complaint found.

NOTE: The complaints listed on Charts A-J are frequently indexed under more than one classification of "nature of complaint". The first few words of the "nature of complaint" category for many of the complaints on Charts A-J ("catch-words") indicate the other classifications under which the particular complaint has been listed.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
4	Client	Sole practitioner	1963 5 other complaints	Litigation - law - solicitor's negligence - Client received a judgment but now lawyer no longer wants to handle his case. Lawyer said he told client that obtaining judgment and collecting judgment are 2 different matters and that he informed client to retain another solicitor.	No basis for complaint found. Law Society informed client that his lawyer charged for obtaining judgment and mailed the execution certificate to him so he could file it with the Sheriff. Law Society said no professional misconduct.
5	Doctor	Partner - 2	1967 2 other complaints	Doctor spent a day in court and hasn't been paid his bill of \$20. He first sent bill to patient but later learned that lawyers are responsible for the fee of a witness so billed the lawyer. Lawyer said Doctor had been involved with his client long before lawyer's involvement and the lawyer was under the impression the client would pay the doctor's fee. Lawyer said he never undertook to pay the doctor's fees but would if Ruling 32 required this.	No basis for complaint found. Law Society felt in the circumstances Ruling 32 did not apply.
6	Client	Sole practitioner	1963 7 other complaints	Family law, complainant said lawyer represented him on possession charge and because he didn't have enough to pay him the lawyer put a lien on the house. Now client says he paid him but lawyer has asked for more money. Client feels the bill is too high. The lawyer said he didn't act on possession charge, another lawyer did. He did act for him on a charge of contributing to juvenile delinquency and also for his children who were charged with theft. Client was acquitted after 1 1/2 day trial in family court. Lawyer charged \$700 for defending the client's children and himself. Lawyer said he made no charge for the work he did on the appeal of the possession charge. The lawyer said he had discharged the mortgage on client's house.	No basis for complaint found. Law Society said there was no misconduct. Reprimand (Convocation) and cost misappropriation and borrowing from client, restriction on trust accounts.

Case No.	Complainant and Location	Accused and type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
7	Client	Sole practitioner	1954 3 other complaints	Family Law - Complainant signed a separation agreement some years previously. Now she is out of funds and wants more. She feels she is entitled to a share of a piece of property she and her husband owned but this property was dealt with in the separation agreement. Lawyer informed her she had no legal basis for claiming a share in the property. Lawyer informed her she could only go after her husband's income for increased payments for maintenance.	No basis for complaint found. Law Society said it doesn't give out legal advice.
8	Client	Partner - 13	1958 1 other complaint	Litigation, Fee, Problem arose over ownership of some paintings. Client failed to obtain legal advice, and let default judgment be signed against him. Interpleader proceedings followed. Client didn't like the advice he received from his lawyer so discharged him. Later complained about the fee (lawyer charged \$200 which Law Society felt was more than reasonable) Client said articling student said he was a lawyer. Lawyer said student was well supervised, was a gold medalist and wouldn't misrepresent his status to a client.	No basis for complaint found. Law Society felt lawyer gave good advice and no misconduct.
9	Client	Sole practitioner	1960 1 other complaint	Family Law, Litigation - Client has been to solicitors says he hasn't been adequately defended in matrimonial litigation and some real estate litigation. Lawyer says was surprised with the complaint in that he had managed to have most of the actions dropped by the plaintiff and had managed to delay the partition proceeding for some time. Lawyer said he intended not to act further for the complainant in view of his numerous complaints to Law Society which are completely unjustified.	No basis for complaint found.

Case No.	Complainant and Location	Accused and type of practice, Location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
10	Client	Partner - 5	1963 4 other complaints	Litigation, Client says lawyer sued the wrong person (same name as party client wanted to sue). Says lawyer ignored all attempts by client to rectify the error. Lawyer said the partnership his client wanted to sue was incorporated and lawyer felt there was a better chance of recovery against the company. Lawyer says at all times client knew the company was being sued and not the partners. The complaint letter was sent when client received their account.	No basis for complaint found. Law Society said no professional misconduct.
11	Company - other side of law suit	Sole practitioner	1955 14 other complaints	Litigation over a mortgage. Complainant who is mortgagee wanted to settle. Says mortgagor wants to settle but settlement is being held up because of mortgagor's lawyer. Complainant says lawyer stalling in order to earn more fees.	No basis for complaint found. Law Society wrote lawyer for company mortgagee who said it was his opinion nothing improper done by lawyer on the other side.
12	Lawyer	Partner - 3	1962 No prior complaints.	Complaints from lawyers against other lawyers - alleged will files were removed from one lawyer's office - other withdrew complaint	No basis for complaint found.
13	Client	Sole practitioner	1956 13 other complaints.	Family law - adoption - lack of communication lawyer gave opinion that adoption would not be granted and returned file.	No basis for complaint found. Law Society will not give out legal advice.
14	Client	Partner - 4	1957 3 other complaints.	Fee - difficulty getting discharge of mortgage - seem to be valid reason for the delay - complaint really against mortgagee not the lawyer.	No basis for complaint found.

Case No.	Complainant and Location	Accused and type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
15	Client	Partner - 6	1970 3 other complaints	Litigation - lost litigation action doesn't see why have to pay lawyers - should have advised them to settle. Lawyer said he did.	No basis for complaint found.
16	Client	Employee in law firm		Client wanted anti-noise by-law against neighbour - had statement of neighbours which lawyer wouldn't show to client - lawyer says he doesn't have to.	No basis for complaint found.
17	Client	Sole practitioner	1969 3 other complaints	Fee - motor vehicle accident settled after 2 days of trial - feels was charged too much. Here large settlement \$85,000, fee \$7,780.	No basis for complaint found. Law Society said not responsible for checking into fees charged - client told about taxation.
18	Executor	Partner - 4	1955 1 prior complaint.	Estate wants original will - lawyer says gave her original and enclosed a signed note saying she took will.	No basis for complaint found.
19	Client	Partner - 2	1973 No prior complaints.	Litigation matter - client made threatening phone calls to lawyer and her doctors about the case. Doctors say that she is seriously ill. Lawyer wants off the record, client felt Law Society was part of a "conspiracy" against her. Lawyer put a lien on client's house after having his bill taxed.	No basis for complaint found. Law Society felt lawyer acted properly.
20	Client (a committee)	Sole practitioner	1949 6 other complaints.	Litigation - At a hearing before a Commission complainant felt their lawyer didn't adequately represent their employee, didn't call certain witnesses, the employee wasn't encouraged to testify in his own defence. Lawyer said the transcript will indicate the employee was fully and adequately represented.	No basis for complaint found. Law Society said no professional misconduct.

Case No.	Complainant and Location	Accused and type of practice, location	Date of Call, number of prior complaints	Nature of Complaints	Disposition
21	Client	Partner - 10	1967 No prior complaints	Real estate - Client sold her apartment. The amount she received was \$500 less than the price she had agreed to.	No basis for complaint found. The wording in the offer was confusing however the lawyer was satisfied after reviewing her file that the client thought she would receive the additional \$500 - a cheque was sent to her in that amount.
22	Client	Partner - 3	1974 No prior complaints.	Litigation, Legal Aid Matter - action for monies due for services rendered. Client said she gave lawyer 19 pages of witnesses and lawyer chose not to call them. Also lawyer didn't ask for enough compensation at the trial. Lawyer said many of the witnesses could not give admissible evidence and she didn't have the names of many persons. With respect to the amount of the claim the client was confused by the evidence - the amount mentioned at the trial was the amount awarded in a similar case.	No basis for complaint found.
23	Solicitor	Partner - 4	1969 No prior complaints.	Real estate - complaints from lawyers against other lawyers. Lawyer complained that he delivered an assignment of mortgage to a lawyer on the condition that \$50 would be paid to him for his fee - lawyer still hasn't received his money.	No basis for complaint found. Later lawyer says he received his money and withdrew his complaint.
24	Client	Partner - 20	1953 4 other complaints.	Litigation - Client was fired from his job. He went to lawyer to sue his employer in October. He wrote to Law Society in February upset that nothing had been done. Lawyer reported that there was some delay in serving the writ and that as soon as he received the statement of defence he will attend to discoveries.	No basis for complaint found. Law Society and lawyer informed the client that litigation is usually a long process.

Case No.	Complainant and Location	Accused and type of practice, location	Date of Call, number of prior complaints	Nature of Complaints	Disposition
25	Beneficiary	Partner - 3	1958 No prior complaints	Estates - a piece of property is managed by a trust company - complainant says through their mismanagement he lost considerable rent. The trust company lawyer doesn't answer complainant's requests for information.	No basis for complaint found. Law Society informed complainant that his problem is a legal one and gave him information about Law Society's Referral Service
26	Client	Partner 3	1973 3 other complaints	Real estate - seller took out fixtures. Purchaser wants them back. Lawyer wrote letters to vendor but no results. Law Society informed client only court can award damages. Lawyer said thought vendor and purchaser were going to settle the matter themselves and failing that client could bring an action. Lawyer said he was waiting to hear from client whether a settlement had been reached.	No basis for complaint found.

CHART B - SOLICITOR'S FEES
1977 n-158

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
1	Client	Sole practitioner	1958 20 prior complaints	Complains that fees too high - other lawyers and judges agree but won't say who they are.	No further action.
2	Outsider	Sole practitioner	1975 1 other complaint	Criminal complainant says lawyer's fees higher if pleads not guilty on legal matters - Legal Aid doesn't agree - found no unethical conduct.	No further action.
3	Client	Partner - 3	1957 16 other complaints.	Fees too high in litigation matter, had fees taxed.	No further action.
4.	Client	Partner - 3	1957 3 other complaints	Real Estate matter, problems with discharging a mortgage, said fees too high - problem was really with mortgagee.	No further action.
5	Client	Sole practitioner	1950 20 other complaints.	Real estate - negligent way real estate transaction was done (failed to register transfer) necessitated application to court. Objects to extra fees as not his fault.	Some problem with collection letters - no formal complaint sworn.
6	Client	Partner - 6	1971 1 other complaint	Family Law, Fees, Law - Solicitor's Negligence - day before action was to be heard dismissed lawyer, unhappy with his advice - lawyer wanted more money and won't turn over files to new lawyer.	Advised that new lawyer could have bill taxed that lawyer has a lien on file until the account is paid.
7	Client	Sole practitioner	1963 12 other complaints	Litigation - fees - criminal income tax case - lawyer hired for appeal, appeal abandoned by the Crown, client says charged too much - lawyer explained what he did.	Law Society said could tax lawyer's bill, no professional misconduct - formal complaint re borrowing from client.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
8	Client	Sole practitioner	1948 14 other complaints	Real estate transaction - complainant claims lawyer wasn't hers on a real estate transaction therefore won't pay for the disbursements. Lawyer had already forgiven the account. Lawyer said he had searched title and reported to client, etc.	Law Society felt it was obvious lawyer had represented the complainant and she should pay the disbursements.
9	Client	Sole practitioner	1954 4 other complaints.	Fees, Communication and Estates, felt fee was too high as she did a lot of the work. After notice of taxation sent then lawyer agreed to reduce by \$300 but client was still unhappy.	Law Society said no professional misconduct. Society has no authority to review solicitor's account.
10	Client	Sole practitioner	1964 5 other complaints	Family Law, Fees - sloppy handling of his case - too high fee. There were numerous applications to court over custody, assault, maintenance, etc. Lawyer explained what he did for the client (much of the complaint seems to arise from misunderstandings about the process)	Complainant saw new lawyer and the bill will be taxed.
11	Client	Employee in Law Firm	1968 4 other complaints.	Fees, Communication, Litigation - Litigation involving real estate transaction - felt lawyer rude and not responsive to her calls and letters, fee too high. Action went to court, judgment debtor had no assets so couldn't get costs. Lawyer explained work he did on file.	Bill will be taxed.
12	Client	Sole practitioner	1950 9 other complaints	Litigation, Misrepresentation, Fees - Court action against School Board, for negligence re ice in school yard. Complainant lost case. Solicitor bill was taxed. Later garnishment and car seized. Basically problem because lost court case and now doesn't see why he should pay for his lawyer who he feels lost the case for him.	No action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
13	Client	Sole practitioner	1949 1 other complaint.	Communication, Fees, Real Estate, complainant states that lawyer and secretaries abusive to him. There was also misunderstanding re \$14 owing. Parties were on very unfriendly terms.	Formal complaint for failure to file Regulation 20 - complaint established - filed before hearing - no further action.
14	Client	Partner - 3	1975 No prior complaints.	Family law - quoted a figure for divorce, now wants more. Lawyer said additional disbursements as had to advertise because of need for substitutional service.	Law Society advised client of his taxation rights.
15	Client (Vendor)	Partner - 3	1968 No prior complaints	Real Estate, Fees, Law, any other question of law - severance of land, land then put for sale by tender, lawyer received tenders, client objected to fee charged. In the accepted offer for purchase was a clause that purchaser would pay 1/2 of vendor's legal costs. Lawyer acted for both vendor and purchaser. Complainant feels lawyer acted more for purchaser. Lawyer took the position the purchaser had not agreed to pay 1/2 of the legal costs to have the property severed and the tendering for sale of the property but rather 1/2 of vendor's legal costs in connection with the sale only. Law Society said it could do nothing further.	No further action.
16	Newspaper sent letter - client	Partner - 3	1965 2 other complaints.	Complaint about fees in family law matter. Settlement of divorce reached on basis client get the deed to the house in lieu of support payments. Client says lawyer won't transfer the deed. Client had complained about the account submitted by lawyer. Went to new lawyer to have it taxed. Account was reduced. An appeal by lawyer was dismissed. Lawyer says he has never objected to transferring title to client and was waiting for client's new lawyer to produce such. His account remains unpaid. Lawyer says he will register an execution against land.	Law Society informed client it is lawyer's right to file execution.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints.	Nature of Complaint	Disposition
17	Client	Partner - 5	1969 1 other complaint.	Client here basically complaining about 4 lawyers Law Society informed feels there was some kind of conspiracy to get her money. Says lawyers failed to apply for interim maintenance. Lawyer said he wouldn't because wife at that time was still living with husband who was supporting her. Also appears client had lied to lawyer about her financial situation, she had a trust fund of \$14,000. Lawyer had himself removed from the record as he felt he could not rely on her judgment and would not start foolish litigation on her behalf. Lawyer sent her a bill which was later reduced but client has still refused to pay it.	Law Society informed client she could have account taxed.
18	Mortgagee	Sole practitioner	1946 8 other complaints.	Real estate, fee, lawyer charged mortgagee \$50 for discharge of mortgage, client said lawyer not acting on their behalf. Lawyer also made small mistake on interest calculation.	Lawyer after contact from Law Society returned the \$50 charged to client.
19	Client	Sole practitioner	1949 11 Back to 1973	Communication, Law, any other question of law, fee, litigation - client was fired from her job with government. After several meetings with Ministry to see if they would take her back, lawyer realized the futility of suing the government in this matter.	No further action.
20	Client	Sole practitioner	1973 4 other complaints	Corporate Commercial - client sold a business with a payment of \$5000 down. New owners got into trouble, lawyer was asked to try and find a new owner as client had left town. In fact several owners were found but they couldn't run business. Lawyer said he did his best and kept advertising - the vendor would have to attend to the business which he refused to do.	Law Society felt lawyer had done everything possible to keep the business operating.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
21	Client	Partner - 4	1973 No prior complaints.	Litigation, Fees - lawyer acted for him in several matters. Lawyer arranged for him to borrow some money from another client of lawyer. Complainant defaulted so that he felt there being a conflict of interest he should no longer act for complainant.	No further action.
22	Client	Sole practitioner	1973 3 other complaints.	Communication, law, any other question of law, Fee, litigation - complainant had a judgment signed against him and as a result his licence was suspended. Client says he wanted the judgment set aside. Lawyer says he informed the complainant that would be impossible but he made arrangements for him to have a licence upon the monthly payment of funds to the Unsatisfied Judgment Fund. Complainant wants his \$200 back as the lawyer didn't get the judgment set aside. The lawyer feels the client has received service for his money and had no justification to complain but he was willing to return the \$200, which he did.	No further action.
23	Client	Sole practitioner	1964 5 other complaints.	Fees, other areas of law not encompassed by above - complaining that fees were too high for 4 or 5 visits to lawyer. Client wants an itemized account.	Law Society said no jurisdiction to review solicitor's accounts, told about taxation rights. The lawyer was informed of the complaint but not asked to reply.
24	Employed by Government	Partner - 12	1964 8 other complaints.	Litigation, fees - litigation action was transferred to the Workmen's Compensation Board who was to handle the claim from then on. Complainant can't pay the lawyer's fee, he hadn't worried about it before because lawyer had assured him that the majority of the costs would be assumed by the defendants when the action was completed.	Law Society informed client of his taxation rights. Lawyer said he reduced his fee to reflect the end results.

CHART C - DELAY - WITH JUSTIFICATION
1977 n=95

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
1	Client	Employee in Law firm	1976 No prior complaints	Delay with justification - Doctor (complainant) left Canada, giving a power of attorney to lawyer to wind up his affairs in Canada, disposing whatever assets he had remaining in Canada. Client says he hasn't received any reply from lawyer. Lawyer said Doctor paid some of his creditors without informing him with the result these creditors were paid twice. As a result lawyer waited to hear from the Creditors with respect to any overpayment before reporting to the Doctor. Lawyer reported that Doctor should have everything now.	No further action.
2	Lawyer	Employee in Law firm	1973 No prior complaints	Lawyer for beneficiary wrote complaining that the lawyer for the estate had failed to reply to their numerous requests about his delay in handling the estate. After numerous letters the beneficiary finally received the first distribution but the client would like to know the reason for the holdup on the completion of the administration of the estate. Another letter arrived from complainant stating it had received 2 replies from the lawyer and that the Law Society needn't trouble itself with the matter further.	No further action.
3	Client	Partner - 2	1950 1 other complaint	Estates- delays in selling a piece of land had trouble with one of the beneficiaries consenting- Ruling 14 violation suspected - went to formal discipline before Discipline Committee.	Discipline Committee felt loan was all right - no further action.
4	Beneficiary	Partner - 3	1958 4 other complaints	Estates - a very small estate with problems with title - executors in agreement to keep costs down and lawyer says in law he is responsible to executor.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
5	Client	Sole practitioner	1957 1 other complaint	Real estate - client signed discharge of mortgage - failed to get one month's interest - lawyer will do nothing about getting it.	Law Society informed client Law Society doesn't have statutory authority to order a lawyer to pay any money - no further action.
6	Client	Partner - 2	1975 No prior complaints	Delays in litigation matter - an earlier solicitor failed to serve writ - therefore they were responsible for problems in starting action.	No further action.
7	Client	Associate - 8	1968 1 other complaint	Slow in receiving settlement funds re litigation matter - client received money after letter to lawyer from Law Society.	No further action.
8	Client	Partner - 3	1960 4 other complaints	Real estate transaction, property still not registered in purchaser's name after 4 months. Lawyer said delay because vendor solicitor having problem with the estate. Title was registered some time after lawyer contacted by Law Society. Client felt lost interest on money while money in lawyer's trust account.	No further action.
9	Public	Partner - 3	1958 3 other complaints	Estates, Delay with justification, Delay without justification - controversy over debt owing by estate to complainant - complainant states that lawyer never replied to letters or calls.	After Law Society contacted lawyer advised that he is satisfied with existence of note and has informed widow (the executor) - no further action.
10	Beneficiary	Sole practitioner	1971 1 other complaint	Delay with justification, Estates - lawyer is executor - unhappy with the delays, beneficiary complains nothing done - lawyer reports everything done - waiting for succession duty release.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
11	Client	Partner - 5	1958 8 other complaints.	Litigation, delay with justification - complainant says he has a "simple" claim and should have reached the courts within a year. He asks why the delay. It appears the claim is quite complex - lawyer said a certificate of readiness has been filed and is on ready list.	No further action.
12	Executor	University professor retired from active practice	1968 3 other complaints	Delay with justification - complicated real estate problem - required closing of road. Owner died and so estate now wished to sell the property. Client has an offer and client fears the sale will fall through if title problems are not cleared up soon. Executors are waiting for a reply from testator's lawyer re the property. Reply came in 2 months later.	No further action.
13	Client	Sole practitioner	1969 5 other complaints	Real estate, fees, litigation, delay with justification - son involved in accident and problem with construction of new home - lawyer not available to client. Lawyer said he was not responsible for inspecting new home. Lawyer said he had transferred the file on the home to a new solicitor at the client's request even though he had not been paid on the transaction (for over a year) With respect to the accident lawyer had issued writ, statement of claim, got Doctor's reports but is waiting before trying to settle action because client says son is not fully recovered yet.	Law Society informed client that lawyer acted competently and should be paid his fees. No further action.
14	Client	Sole practitioner	1968 33 other complaints	Real estate, delay with justification, client says error in statement of adjustments - charged for taxes when they should have been responsibility of previous owner. Letter written October received payment in April, numerous letters sent from client's lawyer to lawyer for vendor. The matter was finally settled when client's lawyer threatened a civil action to recover adjustment.	Invitation to attend.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
15	Trust Co. Lawyer	Sole practitioner	1968 1 other complaint	Real estate, delay with justification, in February 1975 advanced money on a mortgage loan and by October 1975 despite numerous requests complainant still hasn't received the lawyer's report on Title. After Law Society contact, lawyer's report on title sent to mortgagee. Lawyer said was an oversight not sent to mortgagee in first place.	No further action.
16	Client	Partner - 9	1973 3 other complaints.	Delay with justification, litigation - client went to lawyer about getting all her belongings from her son. Says her lawyer is doing nothing for her. Lawyer said he first tried to negotiate a settlement as it was a family matter. The lawyer for her son would not accept service of the writ so there was some difficulty serving the son, signed default judgment and placed a writ of deliverance in hands of Sheriff. Lawyer says it was very difficult to get instructions from his client. Complainant wrote again and said she had received her belongings and was very pleased with Law Society's intervening on her behalf.	No further action.
17	Client	Sole practitioner	1931 7 other complaints.	Litigation, fee, delay with justification - matrimonial litigation settled out of court, divorce went through uncontested. Lawyer took over \$4000 out of settlement for fees. Client asked lawyer for an account but lawyer continues to ignore the requests. Law Society informed lawyer that client is entitled to a written account. Lawyer informed Law Society when the account was done.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
18	Client (Executor)	Partner - 3	1927 2	Estates, communication, delay with justification - executor having trouble with estate lawyer, says he won't respond to her calls, is insulting to her. Lawyer says the problem is that both brother and sister are executors and the brother and sister are bickering. Lawyer says he is unable to get instructions from client as to the liquidation of assets to satisfy succession duties. Lawyer said it may be necessary to advise each executor to retain counsel of their own choice.	No further action.

CHART D - DELAY - WITHOUT JUSTIFICATION
1977 n=145

Case No.	Complainant and Location	Accused, type of practice, Location	Date of Call, number of prior complaints.	Nature of Complaint	Disposition
1	Notary	Partner - 5	1958 8 other complaints	Estates, delay - without justification - complainant said because he has no jurisdiction to act in he entrusted the handling of the estate to the lawyer. After 4 years there has been no results. Lawyer responded saying he had just forwarded to complainant a complete accounting of the estate. Reply from complainant thanking law Society for its intervention.	No further action.
2	Beneficiary	Partner - 8	1959 3 other complaints	Estates, delay - without justification - complaint from beneficiary about lawyer for the estate that he had failed to reply to her request for information. Complainant was to receive a \$5000 legacy. Lawyer said executor does not feel the apartment building should be sold yet as the real estate market for apartment buildings is so poor now so that the cash legacies cannot be paid yet.	No further action.
3	Client	Partner - 2	1971 7 other complaints	Estates, delay without justification - delays in estate matter. As of March 1976 \$1200 in bonds remains unsettled. Husband died in January 1975. Client says she called lawyer many times about the delay. Complainant says she needs the original will to transfer the ownership of the bonds. After intervention by Law Society Client finally received the file in November 1976.	Formal complaint failing to reply to Law Society letters - also a delay situation.
4	Lawyer	Partner - 3	1951 No prior complaints.	Delay - without justification, Family Law - Complainant's client gave authorization to old lawyer to release file to his new lawyer. There were numerous requests for it but lawyer failed send them over. Complainant made the initial request on May 31, 1974 and finally received the papers after the Law Society had contacted the Lawyer in January 1976. Client had given the lawyer a retainer and had never received an account.	Formal complaint failure to reply to Law Society letters.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
5	Client	Sole practitioner	1973 6 other complaints	Delay - without justification - client purchased a drycleaning business. Apparently the lawyer didn't pay some tax or send the insurance paper. Client cannot get cooperation from lawyer. Lawyer wrote to say the matter had been taken care of.	No further action.
6	Client	Sole practitioner	1963 4 other complaints	Litigation, legal aid matter, communication, delay without justification, referred to Benchers - lack of action in litigation matter - lawyer thought he was no longer acting for client - committee felt he didn't act professionally.	Invitation to attend.
7	Client	Sole practitioner	1953 16 other complaints	Litigation, delay without justification, referred to Benchers - lawyer failed to perfect appeal on time also failed to answer numerous letters. Lawyer said he informed the complainant many times that he felt the appeal should be dropped.	Lawyer was invited to attend on the matter - Committee felt should have kept his client better informed, explained the merits of their appeal more closely. Committee also concerned about delays in answering law Society's letters.
8	Client	Sole practitioner	1947 10 other complaints	Estates, delay without justification - complainant's husband had improved rental property in return for 2 years free rent. Husband died before 2 years started and wife feels she has a claim against lessor. Lawyers have done nothing about it, legal aid matter, lawyer referred the matter to another lawyer who would have more time to deal with it.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
9	Lawyer	Partner - 3	1957 99 other complaints	Estates, complaints from lawyers from other lawyers, communication, delay without justification - lawyer complaining that other lawyer not doing anything on estate matter. After several letters it appears action commenced.	Reprimand in Convocation with costs - Discipline Committee felt the solicitor failed to exercise diligence in handling a client's case - Conduct represented a gross departure from the standard practice of solicitors - quality of work fell far short of required professional standards.
10	Client	Partner - 47	1966 No prior complaints.	Family law, delay without justification - law - any other question of law - lawyer not keeping client informed about her divorce proceedings. Lawyer gave petition to articling student to make necessary arrangements for service. Lawyer discovered work not done over a year later. When service was effected it turns out complainant and her husband were divorced in some 5 years previous.	No further action.
11	Client	Sole practitioner	1962 14 other complaints.	Law - Solicitor's negligence, delay - without justification, litigation - client received a cheque which turned out to be N.S.F. Client contacted lawyer in 1974. Nothing was done, although client contacted lawyer many times, client went to a new lawyer who continued to try to contact lawyer. Finally in February 1976 (after Law Society contact) lawyer admits work was neglected by his staff and forwarded to client the amount of the cheque.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of complaint	Disposition
12	Lawyer	Sole practitioner	1962 14 other complaints.	Complaints from lawyers against other lawyers, delay - without justification, fee, litigation, - acted as agent for lawyer in attending on a judgment debtor examination in August 1974. In June 1976 complainant still not paid. Lawyer said he thought his client had paid for this directly. Lawyer sent complainant a cheque for the amount of the account.	No further action.
13	Lawyer	Works for Company	1956 28 other complaints	Corporate commercial, law - any other question of law, complaints from lawyers against other lawyers - a client of complainant was involved in a gas explosion in 1969. Clients came to complainant in 1974 after becoming dissatisfied with 2 previous lawyers. Complainant is having difficulty getting all the documentation. Lawyer says it doesn't have any of his client's business files, never did, as they were burnt in fire. Lawyer said he told client this.	Formal complaint over other matter - failure to reply to Law Society letters - reprimand in Committee.
14	Beneficiary	Sole practitioner	1972 2 other complaints	Estates, delay - without justification, testator died in December 1973. Complainant by March 1976 had not received the final distribution and wants to know why. Lawyer said there were some problems in selling the house, the sale being postponed several times and a substantial number of readjustment undertakings were given on closing. The lawyer with the consent of the executor withheld money to allow for these adjustments. Lawyer feels his obligation is to the executor and the estate and therefore he had to ignore the instructions of the 4 beneficiaries at times. Complainant wrote later and said she had received her share.	No further action.

CHART E - LAW - ANY OTHER QUESTION OF LAW
1977 n=224

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
1	Relation of Client	Sole practitioner	1968 28 other complaints	Criminal, fees - brother was arrested and convicted on a criminal charge and imprisoned. Complainant objected to lawyer bringing in a new lawyer for the appeal. Lawyer said he got his instructions from the brother and not from the complainant. Lawyer said he appeared at the trial without being paid as the trial was imminent. Another letter from complainant criticizing the investigation process by Law Society - passing of letters without follow-up in the way of contacts with the people involved.	Two complaints - both found not to be established.
2	Beneficiary	Sole practitioner	1938 2 other complaints	Communication, law - any other question of law, estates - complaint about the delays in handling an estate matter. Law Society pointed out that executor is responsible to beneficiaries, lawyer replied that his workload was extremely heavy but will attend to the final distribution shortly. \$78,000 had already been distributed, a balance of \$7,000 remained in lawyer's trust account.	No further action.
3	Client	Sole practitioner	1973 1 other complaint	Litigation, law - any other question of law - client hired lawyer for several litigation matters. Three of the matters were settled satisfactorily. One is to be heard in court soon and his lawyer wants to get off the record. Lawyer said his client is extremely difficult to get instructions from, advised him to settle but he wouldn't - said he had a small retainer but he has already earned that and more. Another letter from client saying lawyer won't turn over file. Lawyer replied he turned over file without his outstanding account being paid.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
4	Client	Sole practitioner	1973 6 other complaints	Litigation, law - any other question of law. A group of investors got together to purchase a property. Money for the deal was put in lawyer's trust account. The deal fell through and the client says the lawyer will not release their money. The hold up appears to have resulted because the investor who gave the money to the lawyer disappeared and the lawyer was concerned about a possible suit against him.	No further action.
5	Former client	Sole practitioner	1951 11 other complaints	Real estate, law - any other question of law - complicated real estate problem due to severance condition - lis pendens registered - lawyer had acted at one time for both vendor and purchaser. Client wanted his deeds back from the lawyer as he came to an agreement with one of the prospective purchasers. Lawyer said he felt client never intended to close the deal with his client as he got a better price from someone else however, after discussing with his client he returned the deeds to the complainant.	No further action.
6	Client	Partner - 5	1971 4 other complaints	Landlord and tenant matter - generally dissatisfaction with lawyer's treatment.	No further action.
7	Client	Associate - 5	1960 5 other complaints	Real estate - a bookkeeping error credited client in excess of what they should have received - now lawyer wants it back - client does not want to pay. Is clear lawyer is entitled to the money.	No further action.
8	Client	Partner - 2	1969 2 other complaints	Real estate matter - dispute disbursements	No further action.
9	Public	Partner - 7	1953 3 other complaints	Estates, fees, law - any other question of law - dispute over executor's fee as to share the lawyer would receive.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
10	Client	Sole practitioner	1960 4 other complaints	Real estate, law - any other question of law - litigation over real estate transaction - unsatisfied with performance and said fee too high, given information of his taxation rights.	No further action.
11	Client	Sole practitioner	1940 26 other complaints	Real estate, communication, law - any other question of law - complaining about survey charge in solicitor's account re real estate transaction - lawyer had taxed his bill.	Invitation to attend on another matter.
12	Beneficiary	Sole practitioner	1932 4 other complaints	Referred to Benchner, law - any other question of law, estates - beneficiary feels should get his share of estate now - been held in trust 10 years - Law Society informed client that executor responsible to beneficiaries, may need legal advice. Lawyer informed Law Society that he has no instructions from executor. Benchner advised the client should get own lawyer to request an accounting from executor.	No further action.
13	Client	Sole practitioner	1960 6 other complaints	Family law, fee, communication, law - any other question of law - custody problem unsatisfactory job done by lawyer employed in accused's law firm. Lost documents missed court dates, failed to answer calls etc. so doesn't want to pay. Lawyer admits his former employee was unable to carry out his duties properly because of personal problems however still did a lot of work on files and achieved a satisfactory result so client should pay. Disbursements were a large part of fee. Law Society informed client of taxation.	No further action.
14	Client	Partner - 3	1971 No prior complaints.	Law - any other question of law - real estate transaction fell through. Client had paid for insurance, appraisal, some legal fees, feels should have been reimbursed for this by party who refused to close deal - lawyer only asked for enough money to cover legal expenses. Lawyer advised client that she wouldn't be entitled to be reimbursed for the other things (unforseeable). Law Society said no evidence of misconduct. May feel morally entitled to some relief but on some occasions the law doesn't support such a position	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
15	Crown Attorney	Employee in law firm	1973 No prior complaints	Law - any other question of law, litigation while on holiday lawyer got into some trouble, pleaded guilty to trespassing. Crown Attorney informed the Law Society. Referred to Benchers, felt not serious offence and that lawyer has suffered enough in circumstances.	No further action.
16	Client	Partner - 2	1959 1 other complaint.	Real estate, litigation, law - any other question of law - sold farm, mortgage assumed by purchaser, on default in payment resulted in sale of the property. Mortgagee brought action on the basis of the personal covenant contained in the original mortgage. Client can't understand why - nothing improper done by lawyer - problem due to operation of law relating to mortgages.	Invitation to attend
17	Company Mortgage	Sole practitioner	1958 No prior complaints.	Real estate, delay with justification, law - any other question of law - complainant is mortgagor. Lawyer sold property under power of sale. 4 months since sale but lawyer has still failed to account for moneys received, also charged too much. Lawyer says did account for moneys. A certain amount was held back because a dispute arose about whether tenants had prepaid rent. Lawyer felt fee fair, including numerous correspondence with mortgagor for bad cheques, etc.	No further action.
18	Client	Employee in law firm	1956 2 other complaints	Delay without justification, communication, litigation, family law - unhappy with bill received on divorce matter - took to another lawyer who was supposed to tax it. Lawyer managed to get a \$50 reduction which he felt was fair. Lawyer says he got no further instructions from client. Client denied this.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
19	Client	Partner - 3	1970 5 other complaints	Litigation, Complaints from lawyers against other lawyers, law - solicitor's negligence, law - any other question of law, family law matter, client has gone to new lawyer, wants his file turned over to new lawyer, won't as exercising his solicitor's lien until fees and disbursements have been paid. Law Society said it has no authority to compel a lawyer to deliver a file over which he is claiming a solicitor's lien.	Invitation to attend on other matter - delay in estate - lawyer was asked to explain, and told not to repeat the conduct.
20	Lawyer	Sole practitioner	1948 15 other complaints	Delay without justification, law - any other question of law, other areas of law not encompassed by above - lawyer (complainant) sent letter to lawyer but he won't reply to his correspondence. Problem of woman being entitled to pension. After contact by Law Society lawyer found the missing file, said matter was in abeyance because woman couldn't prove she was in the required 20 years. The file was turned over to the complainant lawyer.	No further action.
21	Client	Partner - 3	1962 5 other complaints	Litigation, law - any other question of law. Client bought a house, real estate agent told her incorrect heating bills, incorrect monthly payments on mortgage. Finding large financial burden and felt lawyer should have protected them. Lawyer said offer was signed prior to bringing it to him. Charged less than tariff as lawyer acted on both sides. Law Society said could do nothing about the misrepresentation of real estate agent. Questions of negligence are for the courts to decide.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
22	Client	Partner - 2	1950 6 other complaints.	Law - any other question of law, estates - complainant is beneficiary of a trust under a will. Client is upset because he wants part of the capital and the lawyer won't do anything about it. Lawyer says he felt it wasn't in client's interest to sue the trust company - little likelihood of success, lawyer feels trust company has acted in proper manner and in compliance with the terms of the will. Lawyer advised client he would have to retain another solicitor if he wants to sue. Law Society said lawyer within his rights not to proceed further if he feels it is not in the best interests of his client.	No further action.
23	Client	Sole practitioner	1955 14 other complaints	Litigation, law - any other question of law - car accident, lawyer gave advice as to probable outcome of law suit. Client seems unhappy with advice. Law Society said he could go to a different lawyer.	No further action.
24	Client	Partner	1973 2 other complaints.	Real estate - law - any other question of law - real estate transaction didn't close - wants his deposit back. Issue as to who is entitled to deposit. Law Society said it can't settle question of law such as who is entitled to a deposit.	No further action.
25	Public	Partner - 3	1972 No prior complaints.	Real estate, law - any other question of law - tenant of building owned by lawyer complained that her rent was increased by more than the law allowed and the lawyer had implied the tenant had a bad moral character. Law Society informed the complainant that this was a private law dispute and that Law Society doesn't render legal opinions. Also this is outside the context of a solicitor-client relationship. Lawyer denied the allegations made by the tenant.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
26	Client	Employee in law firm	1972 3 other complaints.	Law - any other question of law, estates, legal aid, alleged lawyer has procrastinated on estate matter, mother died without will, leaving a house, lawyer said a partition application was commenced. Later it became evident that not all joint tenants were notified (everyone believed one of the brothers to be dead and there may be a sister). Lawyer reported later that a listing agreement was signed in order to sell the house. Value of house only \$16,000 so lawyer says he is keeping costs to a minimum since it must be split 4 ways.	No further action.
27	Former Employee	Sole practitioner	1952 8 other complaints.	Other areas of law encompassed by above - law - any other question of law - former employee of the lawyer has not been paid her salary \$400 still owing. After contact by Law Society client received her money. A letter expressing her thanks for Law Society's efforts followed.	Reprimand in Convocation for misappropriation.
28	Client	Sole practitioner	1968 28 other complaints.	Real estate, law - any other question of law, client purchased a house, says lawyer neglected to catch the municipal assessment owing on her building. Lawyer said there was no assessment at the time of closing. Lawyer obtained an undertaking from the vendor's solicitor on closing to readjust the statement of adjustments and in particular the taxes. Lawyer said he has contacted vendor's solicitor many times and has advised his client of his rights against the vendor but client has provided him with no funds to pursue it. Law Society said no professional misconduct.	Complaint about Ruling 7 - undertaking found not established.

CHART F - MISREPRESENTATION
1977 n=8

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
1	Client	Partner - 2	1973 1 other complaint	Family law - misrepresentation - wife thought by the settlement at her divorce that she was to get a piece of the property consisting of 64 acres. As it turned out the property was only 31 acres. The lawyer says he informed the wife of this but she still wanted to go ahead with the settlement (there was no survey so their estimate of the acreage was based on tax records)	No further action.
2	Client (Mortgage company)	Partner - 2	1966 1 other complaint	Real estate - misrepresentation - mortgage company felt the lawyer handled the mortgage transaction in a very sloppy manner. Client said lawyer advanced the funds prior to registering the mortgage. Also there were several errors in the solicitor's report on title - lawyer admitted making several errors on the solicitor's report but this was because he had great difficulty in getting the name of the mortgagee from the complainant, and had to do the report in great haste. Lawyer clearly did not advance funds prior to registration (sent photocopies to prove this.)	No further action.

CHART G - COMPLAINTS FROM LAWYERS AGAINST OTHER LAWYERS
1977 n=105

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
1	Lawyer	Sole practitioner	1952 8 other complaints	Family law, complaints from lawyers against other lawyers, delay without justification - lawyer had agreed that he would see that 2 accounts with department stores would be paid off out of money turned over under a separate agreement. Lawyer only paid off one. After contact by Law Society, the second account was paid.	Reprimand in Convocation - misappropriation - required to meet certain filing restrictions
2	Lawyer	Sole practitioner	1973 3 other complaints	Complaints from lawyers against other lawyers, communication, real estate. - Lawyer complainant said a prospective client attended at his office with an offer to Purchase. The client took the transaction to another lawyer and informed the complainant the reason for this was that the second lawyer told her that arranging the second mortgage was dependent upon him acting for both the mortgagee and the purchaser. Lawyer accused said he made no such condition and that he had no idea the purchaser had been to another lawyer before. The matter was referred to a Benchler who felt someone was not telling the truth. The opinion of the client involved was obtained and it appeared there was no breach of Ruling.	No further action.
3	Law Firm	Partner - 4	1969 1 other complaint.	Can't contact him - finally managed after contacted by Law Society.	No further action.
4	Lawyer	Partner - 4	1966 1 other complaint	Family law, complaints from lawyers against other lawyers - dispute between lawyers for husband and wife action - settled after writ issued, wife to receive \$400 for support payment, sent \$400 to lawyer but stopped payment on it on client's instructions as felt money would be used to pay for wife's legal fees. A lot of bickering back and forth about fees charged, poor representation, etc. Referred to Benchler, decided Law Society should take no action.	No further action.

Case No.	Complainant and location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
5	Lawyer	Sole practitioner	1947 10 other complaints	Complaints from lawyers against other lawyers, Delay without justification, real estate - complainant said lawyer is holding trust funds for their client. Their client needed the money to buy a house and the lawyer won't turn over the money. Accused says there is no money left he has made a full accounting to the client. Client is an alcoholic so he is probably confused.	No further action.
6	Lawyer and Corporate Client	Partner - 3	1970 6 other complaints	Referred to Benchler, complaints from lawyers against other lawyers, real estate - mortgage company advanced money to a client of accused lawyer. Accused lawyer was acting for both mortgagee and mortgagor. Mortgage company feels the lawyer failed to adequately protect their interest. In one case money was advanced to lawyer before the property was ready. In another case lawyer failed to inform mortgage company of the mortgagor's declining financial position. Also in an affidavit of merits lawyer implied the company used intimidation and duress to collect payment and would run up exorbitant costs, lawyer accused said he informed the mortgage broker about the mortgagor's declining financial position but the communications were verbal.	Invitation to attend on this matter. The Discipline Committee felt the solicitor in the affidavit of merits should have stated facts rather than the broad allegation that the solicitors made a practice of charging excessively - could have taxed the solicitor's bill.
7	Lawyer	Sole practitioner	1951 19 other complaints	Family law, Ruling 32 - unpaid accounts, complaints from lawyers against other lawyers - a client changed solicitors. New solicitor guaranteed payment first lawyer's account but hasn't done so. Lawyer said he gave an undertaking to first lawyer that his fees would be paid after completion of the dispute over the matrimonial home. Later complainant lawyer obtained a default judgment against lawyer. Lawyer paid fees plus costs.	Has been disharred but appealing to court.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
8	Lawyer	Sole practitioner	1973 No prior complaints.	Law-solicitor's negligence, complaints from lawyers against other lawyers - client of complainant lawyer purchased an automobile at an auction sale from the accused lawyer. That lawyer failed to carry out his agreement to attend to having car transferred into his name. As a result client of complainant has received numerous summons for parking tickets, etc. Lawyer replied that he had failed to transfer the ownership. Complainant felt he should pay for the legal expenses of his client. Invitation to attend was issued.	Invitation to attend on this matter. The Discipline Committee felt lawyer's conduct was poor. That he was to pay \$150 toward legal fees and write a letter to the police stating he in fact was the owner of the vehicle when the violations occurred (client was concerned about his reputation with the police).
9	Lawyer	Sole practitioner	1963 9 other complaints	Ruling 7 - failure to honour an undertaking, complaints from lawyers against other lawyers - Vendor's solicitor undertook on closing to withhold sufficient funds to ensure mortgage payment due was made. In fact payment wasn't made and lawyer doesn't reply to complainant's calls. Lawyer said he had trouble contacting vendor, has just done so and they agree they are responsible for the payment. A letter was sent later saying payment has now been made.	No further action.

CHART H - LAW - SOLICITORS' NEGLIGENCE
1977 n=69

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
1	Client	Partner - 3	1963 13 other complaints	Law - solicitor's negligence - client was involved in motor vehicle accident in January 1969. Her first lawyer failed to renew the writ in time. The complaint letter (April 1973) was about her second lawyer who was failing to make much progress on the case. A letter from the second lawyer (May 1973) indicated that the first lawyer had admitted liability so that the only issue was the quantum of damages. Lawyer said he was getting together medical reports, etc. Another complaint letter to Law Society on May 1974 reporting still no progress. Finally a settlement was reached in October 1974.	No further action.
2	Client	Sole practitioner	1972 6 other complaints	Client says lawyer negligent in handling his application for reinstatement in his job. Law Society told him only courts have the authority to decide whether solicitor has been negligent, and therefore to see another lawyer.	Invitation to attend on another matter.
3	Client	Partner - 3	1957 4 other complaints.	Corporate Commercial, litigation, law - solicitor's negligence, law - any other questions of law - unhappy with the outcome of litigation dealing with a partnership matter - Law Society said it can do nothing to interfere with any judgment handed down by Court - here lawyer drew up partnership agreement. Client feels should have had independent legal advice as lawyer was related to partner. Lawyer felt he had done nothing improper, just documented what the parties had already agreed to.	No further action.
4	Doctor	Partner - 2	1966 8 other complaints.	Doctor complained that lawyer requested confidential information about a patient, the wife of the lawyer's client - matrimonial dispute.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of complaint	Disposition
5	Client	Sole practitioner	1972 No prior complaint.	Law - solicitor's negligence, law - any other question of law, referred to Benchers, real estate - complaining of lawyer's negligence - Law Society said no power to determine whether a lawyer has been negligent; nor can it order a lawyer to pay anyone money. Informed about Errors and Omissions Insurance. Complainant bought new house, defects on the building - felt should be entitled to funds from mortgagee. No evidence of negligence to Benchers but complainant told to see another lawyer as Law Society only responsible for professional misconduct or conduct unbecoming a solicitor - whether a solicitor is negligent is a question of law for courts to decide.	No further action.
6	Client	Partner - 2	1973 No prior complaint.	Mechanic's lien litigation - before the Master felt lawyer didn't do a good job - Law Society pointed out it has no jurisdiction over Master. Client can appeal Master's decision - in fact Master said reason lost was client's lack of credibility (note complainant was personally interviewed - told to put complaint in writing)	No further action.
7	Client	Partner - 2	1966 4 other complaints.	Litigation, law - solicitor's negligence - boating accident, client charged and convicted with failure to keep proper lookout. Client felt lawyer did poor job representing him. Lawyer stated he felt client was going to be convicted, advised him to plead guilty many times - another letter complaining about \$250 fee Law Society informed client of his taxing rights.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of call, number of prior complaints.	Nature of Complaint	Disposition
8	Client	Partner - 4	1957 7 other complaints.	Litigation, law - solicitor's negligence - litigation matter, client says the lawyer failed to serve two writs and now the limitation period has passed. The Court won't renew the writs. Law Society informed client it is a negligence matter and must seek legal advice from another solicitor, Law Society also informed client about Error and Omission insurance. Law Society said has no authority to order a lawyer to pay any money so a discipline hearing would not help him at all. Client had trouble getting a local lawyer to sue another local lawyer.	No further action.
9	Client	Partner - 7	1972 1 other complaint.	Other areas of law not encompassed by above, fees, law - solicitor's negligence - husband said he paid fees of wife for marriage separation, negotiations and now lawyer is trying to get the fees from his wife too. Lawyer apologized, complainant is correct - the reason for the confusion was the lawyer left the firm and for a short period it was unclear which outstanding accounts would be his responsibility to collect. The first he heard about the husband paying the account was in the letter from Law Society.	No further action.
10	Doctor	Partner - 5	1957 15 other complaints.	Ruling 32, law - solicitor's negligence - lawyer despite numerous requests has not paid for medical report of his client after contact by Law Society lawyer forwarded cheque to the doctor, complainant.	Complainant found not established - Legal Aid said lawyer tried to get fee from Legal Aid and client.

Case No.	Complainant and location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
11	Client	Partner - 38	1959 1 other complaint.	<p>Law - solicitor's negligence, communication, other areas of law not encompassed by above</p> <p>- lawyer prepared client's income tax returns. It appears that lawyer missed including some mortgage interest in his income so now National Revenue demands the money which she no longer has - lawyer said he prepared the tax return on the basis of information furnished by Client which did not include anything about the mortgage also said the returns were sent to her for her review and signature. Law Society told client if anything, this would be a matter of professional negligence and that the status giving the Law Society its power has no authority to determine whether a lawyer has been negligent nor does it have authority to order a lawyer to pay damages.</p>	No further action.

CHART I - COMMUNICATION
1977 n-224

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints.	Nature of Complaint	Disposition
1	Client	Partner - 2	1962 14 other complaints	Litigation matter - delay in finalizing a settlement, it was done after contact with Law Society.	No further action.
2	Client	Partner - 3	1957 15 other complaints	Litigation, communication, fee - fees said were too high in litigation matter - client had his bill taxed	No further action.
3	Client	Partner - 3	1970 1 other complaint	Estate - lack of communication - after letter from Law Society client was informed about matters troubling him (by lawyer)	No further action.
4	Client	Associate - 5	1968 No prior complaints.	Referred to Benchler, law - solicitor's negligence, law - any other question of law, fee, communication, litigation - client unhappy with lawyer's advice to drop case. Law Society no jurisdiction for Law Society to discipline members for negligent actions - must be so gross as to constitute professional misconduct.	No further action.
5	Client	Partner - 3	1973 No prior complaints.	Law - any other question of law, communication, litigation, referred to Benchler - litigation matter - client lost in court, says lawyer had failed to give legal opinion about his chances of success. The assistant secretary referred the matter to a member of the Discipline Committee in order to convince complainant that Law Society could do nothing because it was not within their jurisdiction.	No further action.
6	Client	Not employed	1958 8 other complaints	Estates, communication - lawyer did help client's husband with some matters before husband died. Wife thought lawyer was acting on husband's estate - lawyer said he never was, that in fact he was retired from the practice of law.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
7	Client	Sole practitioner	1965 No prior complaints.	Real estate, communication - lawyer failed to get insurance matters straightened upon sale transaction. Client received letter from insurance company saying complainant interest protected.	No further action.
8	Client	Sole practitioner	1972 2 other complaints.	Family law, legal aid matter, delay - without justification - matrimonial - want arrears in maintenance - client didn't show up for show cause hearing in family court. Legal aid withdrew certificate so lawyer off case. Told to go to legal aid.	No further action.
9	Third party	Sole practitioner	1946 3 other complaints	Law - any other question of law - communication, estates - complainant says lawyer ignoring her letters - husband died, almost year before, husband was not living with complainant at the time. Lawyer says he is under express instructions from his client the executor not to correspond with complainant. Law Society informed complainant that it was not their function being a private society to decide questions of law - must seek outside counsel.	No further action.
10	Client	Associate - 3	1971 No prior complaints.	Communication, litigation - motor vehicle accident, lawyer asked for a retainer, client thought he wouldn't have to pay anything - lawyer was upset because client had settled part of the case without consulting him thereby jeopardizing his chances of success. In a later letter from client apologizes for the misunderstanding.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of call, number of prior complaints	Nature of complaint	Disposition
11	Beneficiary	Partner - 3	1954 No prior complaints.	Communication, law - any other question of law, estates - testator died in 1973. Complainant (1976) wants to know when estate will be finally settled - lawyer replied that he had completed the preparation of the accounts.	No further action.
12	Client	Partner - 2	1970 16 other complaints.	Litigation, communication, delay - with justification - matrimonial, complainant says lawyer doesn't answer her calls and doesn't appear to be doing anything on the file. Lawyer said he just received the transcripts of the examinations for discovery and is delivering a certificate of readiness. Law Society felt lawyer had the matter well in hand.	No further action.
13	Client	Sole practitioner	1968 33 other complaints.	Real estate, communication - complainant feels \$500 too much was paid to the real estate agent. A previous sale fell through and client feels the lawyer's fee of \$500 was too high on a transaction that didn't even close. Litigation was commenced over failure to close. Lawyer says that he, not the real estate agent has the \$500 in trust pending the outcome of the litigation. With respect to his fee of \$500 lawyer feels this was reasonable - he had to do everything in order to tender, said client can tax bill if he wants.	Invitation to attend on another matter.
14	Beneficiary	Associate - 2	1971 2 other complaints	Fee, communication, estates - client says there is \$750 in estate that should be distributed to beneficiaries. Law Society informed client it cannot order an administrator of an estate to pay out. Lawyer said money paid to administrator.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
15	Client	Sole practitioner	1960 11 other complaints.	Family law, communication - in 1975 client wrote his complaint letter complaining about the delays in his divorce which had been pending since 1970. Lawyer wrote enclosing a letter he had sent to his client stating that he must apply to add a public trustee and obtain information from a psychiatrist before bringing on the proceedings for a hearing. Before he will do so the lawyer told client he must have the arrears paid up. Law Society informed complainant it has no authority to review accounts.	No further action.
16	Client (Mortgage Company)	Sole practitioner	1963 5 other complaints	Real estate, misrepresentation, communication - client says lawyer failed to follow its instructions when lawyer handled a mortgage transaction for them. Lawyer failed to put both husband and wife on the mortgage and also failed to indicate the correct amount outstanding on the first mortgage. Lawyer said he contacted complainant's company and they informed him to go ahead with the loan.	No further action.
17	Client	Associate - 2	1973 6 other complaints	Litigation, communication - complainant was involved in motor vehicle accident - he became unhappy with his lawyer and went to a new lawyer. His first lawyer won't release the file without his account being paid. Lawyer said he felt this was his right. Law Society informed complainant that by S. 6(6) of the Solicitors Act R.S.O. 1970, a solicitor is entitled to keep documents in his possession until such time as his account for services has been honoured. Taxation of the account followed. The complainant's new lawyer hasn't contacted the old lawyer's office to arrange for the release of the file.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
18	Client	Partner - 3	1963 13 other complaints	Real estate, communication, delay - without justification - client sold a piece of property - after a few months client hadn't received the mortgage statement, later discovered the property was still in his name. Client went to a new lawyer who wrote accused several times but received no reply. The 1st lawyer here acted for both vendor and purchaser. The vendor agreed to let purchaser into possession prior to closing. On the search of title in May 1974 a serious problem arose which was still not resolved when the file was closed in May 1976. Lawyer said he has forwarded the file to his client as she requested.	No further action.
19	Client	Sole practitioner	1963 7 other complaints	Family law, communication, fee - complainant wanted an investigation of her husband at a certain motel. Lawyer was informed there was no such motel but was one in town nearby so he authorized that it be investigated. Client doesn't want to pay for the investigation (\$150.)	Reprimand in Convocation and costs for borrowing from clients.
20	Client	Sole practitioner	1936 12 other complaints.	Family law, communication, law - any other question of law - complainant is unhappy with the wording in decree nisi - client said she wanted to appeal because no security was provided but the appeal wasn't followed through by lawyer. Lawyer said you don't put in the ground of adultery when drafting a decree nisi. Lawyer said the appeal was abandoned when his client agreed to settle for a lump sum payment.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
21	Beneficiary	Partner - 3	1966 5 other complaints	Estates, communication, law - any other question - complainant said she had bought her mother's tombstone and was not paid for this and had not received her share of the estate. Lawyer said he had paid over everything to the executor on his instructions, lawyer said it was not his duty to see that executor carried out his duties. Law Society said remedy is against the executor and not the lawyer for the estate therefore it has no jurisdiction.	No further action.
22	Client	Partner - 4	1964 1 other complaint.	Litigation, communication - motor vehicle accident - complaint that lawyer had done nothing to appeal "no fault" benefits. Lawyer had issued writ against insurance company for benefits, made settlement with insurance company but client was to check the amount of benefits outstanding - didn't hear back.	No further action.
23	Client	Partner - 3	1958 1 other complaint	Family law, communication - complaints about several lawyers - if question of professional negligence have to consult lawyer in private practice. Prior to marriage difficulties wife had signed over property to husband. She says lawyer didn't explain the nature of the document. Lawyer said he did.	No further action.
24	Client	Partner - 2	1973 1 other complaint.	Communication, law - any other question of law, real estate - bought a house, wanted to qualify for RIOP which necessitated the deed being registered by end of the year. Deal couldn't close in time due to vendor's fault. Lost out on RIOP, and grant and felt his lawyer's fault. Later wrote saying his lawyer had done everything to speed up closing and was sorry to have inconvenienced everyone.	No further action.

Case No.	Complainant and Location	Accused, type of practice, location.	Date of Call, number of prior complaints.	Nature of Complaint	Disposition
25	Client	Sole practitioner	1968 33 other complaints.	Real estate, communication, client purchased a condominium - said were liens on title, lawyer said these have been removed. Problem with workmanship in building. Lawyer said he got usual builder's undertaking. He has turned files over to complainant's new lawyer.	Invitation to attend on other matter.
26	Client	Sole practitioner	1970 1 other complaint.	Corporate, commercial, communications law - any other question of law - purchase of a business, lawyer acted for both sides. Purchaser of business alleges lawyer failed to look after his interests. Said a boat disappeared pending closing he thought land would be cleared but discovers a shed is rented for the year, lawyer incorrectly filled out retail sales tax form so was charged too much. Lawyer says client knew about the lease, vendor clearly indicated the boat was not part of the deal and purchaser never informed lawyer about valuation for Retail Sales Tax.	No further action.

CHART J - REFERRED TO BENCHER
1977 n=68

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of Complaint	Disposition
1	Client	Sole practitioner	1963 4 other complaints.	<p>Litigation, legal aid matter, communication, delay without justification, referred to Bencher - complainant was involved in litigation matter. He changed his solicitors in 1971 and there was some work done on the file initially but then nothing appeared to be done for 5 years. Lawyer said he thought client had either forgotten the matter as there was no contact with the client in the 5 year interval or he had gone to another lawyer. Bencher felt that as the lawyer had signed the Legal Aid certificate he thereby indicated his willingness to act on behalf of the complainant and therefore the lawyer should be invited to explain his conduct on the matter.</p>	<p>Invitation to attend Discipline Committee - warned lawyer to keep in better touch with his clients.</p>
2	Client	Partner - 7	1963 5 other complaints	<p>Real estate, referred to Bencher, misrepresentation - complainant purchased a house. Lawyer acted for both the builder (vendor) and the purchaser and the mortgagee. Client says he was never told that lawyer acted for both sides. Later on drainage problems occurred and his lawyer said he would have to get a new solicitor as lawyer had also acted for the builder. The lawyer said he informed his client that he acted for all the parties in the transaction. Law Society felt that as the issue here was a straight matter of credibility there was insufficient evidence on which to base a complaint of professional misconduct. However, the benchers to whom the complaint was referred felt that the drainage problem was not a matter within the ambit of a solicitor acting for a purchaser in a real estate transaction and therefore any technical breach of ruling 2 was not the cause of the complainant's problem.</p>	<p>No further action.</p>

[Ruling 2 places limitations on a lawyer's ability to represent both sides in (inter alia) real estate transactions.]

Case No.	Complainant and Location	Accused, type of practice, location	Date of Call, number of prior complaints	Nature of complaint	Disposition
3	Public	Partner - 7	1962 1 other complaint	Real estate, referred to Benchner - there was litigation over a real estate transaction that didn't close in which the complainant lost and costs were awarded against him. At taxation the accused's bill of Costs was reduced almost in half which client still feels is too high. Law Society will not interfere with Taxing Master's decision. Could appeal this Master's decision however in view of the large reduction he was told that would probably not be wise. A Benchner's opinion was sought with respect to how members of Law Society Staff might assess the position of lawyers when they have their accounts substantially reduced by the taxing officer. The Benchner's opinion was that on a solicitor and client's bill both sides have the protection of taxation and that the Law Society should generally not interfere in a disciplinary way. The Benchner did say that disciplinary proceedings may be justified in circumstances where the lawyer has held money in trust from which he deducts his account and after taxation the lawyer is ordered to reimburse a substantial amount to his client. In any event each case should be decided on its own rather than using any particular percentage reduction by the Taxing Master as an indication that the bill was improper and disciplinary action is warranted.	No further action
4	Client	Partner - 9	1968 No prior complaints.	Referred to Benchner, communication - law - any other question of law - lawyer used letters from complainant client to her boyfriend in divorce action for another client. Invitation issued on the matter. Committee felt no breach of rules but lawyer should have explained to complainant before producing them in court.	Invitation to attend. Lawyers told to write complainant on this.

Case No.	Complainant and location	Accused, type of practice, location	Date of Call, number of prior complaints.	Nature of Complaint	Disposition
5	Sole practitioner	Sole practitioner	1953 15 prior complaints	Complaints from lawyers against other lawyers, referred to Benchner, communication, other areas of law not encompassed by above - law clerk left firm to work for another - took files with him - later resolved the matter. Benchner felt complaint been answered and was basically a misunderstanding.	No further action.
6	Public	Government Department	1963 No prior complaint	Referred to Benchner, law - any other question of law, other areas of law not encompassed by above. Comment made by lawyer published in the press about executives of a certain company involved in wrongdoing. Referred to a Benchner. Lawyer said statements were taken out of context. Benchner said that lawyer's letters should be forwarded to complainant and to tell him no disciplinary action was warranted.	No further action.
7	Daughter of Client	Sole practitioner	1949 12 other complaints to 1973	Lawyer had acted for a client for many years. Client needed to be put in a nursing home, daughter had house sold. The money was put in lawyer's trust account. Daughter wants to have charge of the account as one cheque from account was returned N.S.F. Auditor from Law Society was sent to clear problem and told lawyer to have all cancelled cheques sent to him. This is really a personal dispute according to lawyer was his client's wish that her daughter not get hold of her money.	No further action.

TABLE IV
LAW SOCIETY OF UPPER CANADA INVITATIONS TO ATTEND (1976)

Case No.	Complainant	Type of practice Location of practice Date of call	Nature of Complaint	Disposition
1	Client	Firm 1954	No details available	No details available
2		Sole practitioner 1963	Lack of communication with client	Committee told lawyer to keep in better touch with client
3		Firm 1956	Rule 14	No details available
4	Client	Sole practitioner 1958	Failure to follow instruction with respect to the use of client's money	Told to advise insurers immediately.
5	Public	Firm 1972	Lawyer acted for 3rd mortgagee on a real estate transaction. Some mistake occurred in the amount required to pay off the complainant's loan which had a detrimental affect on the complainant's credit rating.	At the hearing the lawyer apologized for any mistake he made. Complainant wanted the committee to make a determination as to who was wrong.
6		Sole practitioner 1972	Failed to appear in court on criminal matter. This matter was referred back to Chairman for reconsideration.	A formal complaint was sworn, the complaint was held to be not established.
7	Lawyer	Sole practitioner 1958	Failure to answer correspondence from the Society. Complainant required some information on an estate matter. The solicitor undertook to turn over all documents to the new solicitor. The lawyer here had resigned.	The Committee asked that Law Society follow up the matter as they were concerned as to the faculties of the lawyer to fulfill his promise.
8		Sole practitioner 1963	Rule 14	No details available

Case	Complainant	Type of practice location of practice Date of call	Nature of Complaint	Disposition
9		Firm 1959	Rule 14	No details available.
10	Judge	Sole practitioner 1973	Dealt with his failure to appear in court on 3 occasions and failure to provide substitute counsel.	Lawyer could provide no explanation, given strong advice.
11	Client	Sole practitioner 1959	Litigation action for the recovery of a deposit, lack of progress on the file for over 3 years.	Lawyer received the strong advice of the Discipline Committee as to his handling of the file. Assistant Secretary undertook to follow up on the lawyer's progress on the file.
12		Firm 1957	Rule 14	No details available.
13		Firm 1972	Rule 14	No details available.
14	Public	Sole practitioner 1973	The situation involved a conflict of interest where the solicitor acted for the purchasers of a piece of property that was owned by a company in which the lawyer had an interest.	Committee didn't discuss because of pending civil litigation. Discipline Committee felt that if the court made findings of fact that substantiated the complainant's story that the Law Society should consider issuing a sworn complaint rather than an invitation.
15	Lawyer	Employee in a law firm 1972	Lawyer's employee gave undertaking on closing real estate transaction.	Committee felt must comply even though employee was not authorized to give undertaking. Lawyer agreed to comply with the undertaking.
16	Judge	Associate 1969	Failure to perfect an appeal in time and to appear in court when his cases were being spoken to.	Discipline Committee reminded solicitor of his duty to the Court.

Case No.	Complainant	Type of practice location of practice Date of call	Nature of Complaint	Disposition
17	Lawyer	Sole practitioner 1973	Failure to honour undertaking	No details available.
18	Lawyer	Sole practitioner 1968	Dispute about undertaking.	No details available.
19	Client	Sole practitioner 1970	Delay in handling an estate matter.	No details available.
20		Sole practitioner 1970	Failure to answer Law Society letters.	No details available.
21	Lawyer	Sole practitioner 1973	Committee felt situation arose because both solicitors involved had been sloppy in handling the real estate transaction.	Committee felt situation arose because both solicitors involved had been sloppy in handling the real estate transaction.
22	Lawyer	Sole practitioner 1974	Sloppy work involved in real estate matter.	No details available.
23		Firm 1965	Rule 14	No details available.
24	Client	Sole practitioner 1969	2 1/2 year delay in prosecuting a motor vehicle accident action. Solicitor apologized.	Came to a resolution about complainant's case and complainant agreed that lawyer should continue representing her. Later letter from complainant stating matter had been settled.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
25	Lawyer and client	Employee in law firm 1970	Lack of communication on the file.	Committee felt he had served an improper statement of claim stating lawyer charged too much; should have taxed cost.
26	Lawyer	Firm 1975	Failure to honour undertaking in real estate matter.	No details available.
27	Lawyer	Firm 1975	Improper conduct in court; failed to inform the court about the interest of the first and second mortgagees who were not represented at the trial.	No details available.
28	Client	Sole practitioner 1963	Lawyer had been disciplined in the past. Client has claim for money from lawyer. Client had overpaid on a mortgage on his solicitor's advice and had done nothing to get money back. Lawyer had failed to reply to Law Society correspondence.	Discipline Committee said lawyer should have checked his reporting letter more closely. Discipline Committee also felt should have been a sworn complaint as failure to answer correspondence from Law Society is a very serious offence. Discipline Committee felt client could sue the lawyer for the overpayment
29	Client	Firm 1956	Delays involving an estate result.	Discipline Committee said lawyer must obtain an opinion as to client's chances of success and must send a copy of the opinion to the Law Society.
30	Government official	Sole practitioner 1974	Improper conduct; concerned arrangements for the marriage of his client in local jail. Lawyer was not sensitive to the interests of others.	No details available.
31	Employee in law firm	Employee in law firm 1972	Rule 14	No details available.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
32		Firm 1975	Rule 14	Advised should not have proceeded with the loan and to discharge it forthwith - promissory note only security.
33	Member of the public and his lawyer	Sole practitioner 1973	Improper conduct - solicitor evading the payment of parking fines on a car he sold to complainant.	No details available.
34	Lawyer	Sole practitioner 1969	Lawyer discussed real estate matter with the client of another lawyer.	No details available.
35	Client	Sole practitioner 1968	Failure to follow client's instructions	Committee recommended a formal complaint be issued - misled clients to believe divorce had been started.
36	Client	Firm 1953	Lawyer had been disciplined in past for failure to reply to Law Society letters and for failure to keep his clients informed of the attempts made to collect on a judgment. In this case the Discipline Committee felt the solicitor had handled the case in an unprofessional manner. Lawyer had failed to perfect his client's appeal. Lawyer had advised the client that he felt the appeal would be unsuccessful and the clients failed to provide him with the necessary papers to file the appeal books.	Discipline Committee felt the lawyer should have advised the clients by letter of their rights and he should have requested them to provide him with written instructions. Discipline Committee felt the lawyer should have kept the clients informed of the attempts to collect on a judgment.
37		Associate 1971	Rule 14 re Form 2	No details available.
38		Firm 1972	Rule 14	No details available

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
37		Associate 1971	Rule 14 re Form 2	No details available.
38		Firm 1972	Rule 14	No details available.
39	Client	Sole practitioner 1941	Delay in completing his work on estate matter; solicitor offered various reasons for the delay (medical, difficulty in determine some of the assets)	Committee felt it was an unreasonable delay; lawyer must file with the Society reports every 2 weeks as to the progress being made; it was pointed out to him that if matters did not proceed expeditiously he may end up before the Committee again.
40		Firm 1973	Soliciting; lawyer had circulated a petition bearing his letterhead.	Committee noted he had been before the Committee in the past on 2 occasions and was told he would be more harshly dealt with in the future.
41	Lawyer	Sole practitioner 1966	Lawyer's delay in handling a divorce matter.	No details available.
42		Sole practitioner 1934	R.3(1) soliciting; matter concerned a letter he sent to a number of trucking companies advising that he had resigned and was now available to carry on a general practice before the Transport Board.	Lawyer apologized and said it would not happen again.
43	Client	Firm 1971	Failure to appear in court, Discipline Committee asked to explain procedures employed by law firm in keeping track of court days.	Discipline Committee expressed view - hoped problem would not recur.
44	Client	Sole practitioner 1968	Litigation matter indicating lack of communication.	Discipline Committee felt should have explained fully his reasons for doing things - Committee felt there was no breach of the rules.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
45	Real estate agent	Associate 1963	Real estate agent felt he lost his commission because of lawyer's behaviour - said lawyer tried to deal directly with the vendor.	Committee felt lawyer had done nothing improper.
46	Client	Firm 1966	Rule 14 - Mortgage where mortgagee was solicitor's father.	Committee felt should have been independent legal advice but there was nothing wrong with the mortgage - also client claimed lawyer failed to explain the meaning of the transaction.
47		Sole practitioner 1962	Rule 14 - Real estate transaction, lawyer's wife bought a lot from client; client not unhappy with the transaction - no advice that client seek independent legal advice was given - lawyer apologized for the impropriety.	No details available.
48		Firm 1973	Rule 14 - Lawyer said he was unaware of Rule 14.	Committee said a matter for his own conscience to decide whether to discharge the mortgage.
49		Sole practitioner 1972	Rule 14 - Rule 15 - Lawyer acted for both mortgagor and mortgagee, Lawyer failed to counsel his client about obtaining independent legal advice.	No details available.
50		Sole practitioner 1955	Lawyer had borrowed from clients, had non lawyers sign trust cheques and one of lawyer's client's trust account remained overdrawn for 2 years.	Committee felt the matter should not be dealt with by invitation to attend. Complaint was sworn and lawyer was reprimanded in Committee.
51		Associate 1950	Rule 14. No independent advice - appeared interest rate on the loan favoured the solicitor.	No details available.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
52	Lawyer	Sole practitioner 1962	Failed to respond to correspondence from complainant about an account for services rendered to one of the complainee's clients that was to have been paid by the complainee.	No details available.
53	Sheriff	Sole practitioner 1971	Litigation matter - lawyer had tried to use publicity to further his client's case - the mortgagees were exercising their legal rights of eviction - the lawyer's behaviour embarrassed the Sheriff in the exercise of his duties.	No details available.
54		Firm 1960	Rule 14	No details available.
55		Firm 1966	Rule 14	No details available.

Firm Size of Accused	Date of Call of Accused	Location of Practice of Accused
Sole practitioners 28	1973-1976 11	Toronto 24
Partners 20	1970-1972 13	Ottawa 5
Associate 4	1969-1970 18	Other 26
Employee 3	1959-1969 11	55
	1949- 2	
	55	

TABLE IV
LAW SOCIETY OF UPPER CANADA INVIATIONS TO ATTEND
January 1977 to November 7, 1977

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
1		Firm 1958	Rule 14	No details available.
2		Sole practitioner 1968	Rule 14	No details available
3	Judge	Firm 1971	Complaint by judge before whom lawyer acted as counsel; judge expressed concern about lawyer's ability to properly represent litigants.	At hearing lawyer said he was terminating his civil litigation practice. The matter would be referred to Errors and Omissions Committee.
4		Associate 1970	Rule 14	No details available
5		Sole practitioner 1959	Rule 14	No details available.
6		Sole practitioner 1969	Threatened to lay criminal charges to collect civil debt.	No details available.
7	Member of the public	Firm 1955	Breach of R. 7 (undertaking)	No details available.
8		Firm 1953	Rule 14	No details available.
9		Retired 1955	Failed to advise Law Society of his assignment in bankruptcy.	No details available.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
10		Sole practitioner 1972	Rule 14	No details available.
11		Otherwise employed 1968	Used "order of eviction" document which could be mistaken for court document.	No details available.
12		Firm 1964	Rule 14	No details available.
13		Firm 1954	Rule 14	No details available.
14		Sole practitioner 1965	Rule 14	No details available.
15		Sole practitioner 1967	Soliciting - distribution of cards -	No details available.
16		Sole practitioner 1969	Lawyer had failed to attend on a motion due to illness and failed to have someone else appear for him.	Discipline Committee advised him to keep in better touch with his clients and he should not let this happen again.
17		Sole practitioner 1965	Failure to attend on taxation.	No details available.
18		Firm 1967	Failure to answer correspondence from Law Society - Original complaint from the client because the lawyer had failed to pursue a debt collection matter.	The Discipline Committee urged the lawyer to file a response with the Law Society as soon as possible.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
19		Firm 1972	Wrote to client's husband's employer while representing wife in matrimonial dispute. Husband was represented by his own solicitors.	No details available.
20		Sole practitioner 1963	Outstanding Discipline Committee costs unpaid.	No details available.
21		Firm 1976	Employees of lawyer had criminal backgrounds.	No details available.
22	Client	Sole practitioner 1962	Failed to answer correspondence from Law Society. Here lawyer delayed in starting any action for adverse possession of land.	Solicitor apologized to client.
23		Firm 1930	Sloppy handling of litigious matter.	Told he had to keep his clients better informed.
24		Firm 1969	Rule 14	No details available.
25	Lawyer	Firm 1968	Improper behaviour in handling the return of stolen property. Lawyer tried to bargain for a reward.	No details available.
26		Sole practitioner 1945	Rule 14	No details available.
27		Firm 1959	Rule 14	No details available.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
28		Firm 1967	Rule 14	No details available.
29		Firm 1974	Rule 14	No details available.
30		Firm 1968	Rule 14	No details available.
31		Firm 1973	Rule 14. Security was left un- registered for 11 months.	No details available.
32	Client	Firm 1970	Asked to explain delay of four years on legal aid matter.	Committee felt no excuse for delay and it should not reoccur.
33	Lawyer	Firm 1971	Failure to answer correspondence from Law Society. Lawyer acted for the complainant as his agent for collection purposes. As a result of the lawyer's procrastination it was alleged that the creditor was unable to collect on his judgment.	Discipline Committee advised the lawyer not to let this happen again. Lawyer agreed to make good the judgment creditor's loss of \$900.
34	Lawyer	Sole practitioner 1953	Family law. Lawyer had agreed to pay other side's costs, not done and failed to reply to complainant's calls and letters.	No details available.
35	Client	Firm 1956	Real estate, asked to explain the delay and his failure to reply to client's calls and letters.	No details available.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
36	Lawyer	Firm 1974	Wrote letter to lawyer threatening to report him to Law Society.	Law Society does not approve of lawyers threatening to report something to Law Society in order to get some action on a case.
37		Firm 1949	Rule 14	No details available.
38		Firm 1959	Rule 14.	No details available.
39		Firm 1972	Litigation problem.	Lawyer appeared before Discipline Committee to discuss his withdrawal from criminal case.
40		Sole practitioner 1972	Publication of his opening and specialization.	No details available.
41		Firm 1957	Rule 14	No details available.
42		Firm 1952	Rule 14	No details available.
43		Firm 1951	Rule 14	No details available.
44		Firm 1965	Rule 14	No details available.
45		Firm 1960	Rule 14	No details available.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
46		Firm 1956	Rule 14	Committee felt lawyer should pay off loan as promissory note only security.
47		Sole practitioner 1972	Rule 14	No details available.
48		Firm 1975	Rule 14	No details available.
49	Client	Firm 1973	Litigation - lack of communication. Lawyer had retained outside counsel without client's consent.	No details available.
50	Client	Firm 1971	Lawyer had been reprimanded in Committee in past for failure to inform his clients as to what was happening. The matter had to do with a dispute between his clients and Chargex. The clients were on a legal aid certificate.	No details available.
51		Sole practitioner 1951	Rule 14	No details available.
52		Sole practitioner 1971	Advertising	No details available.
53	Lawyer	Sole practitioner 1941	Real estate, gave personal undertaking on closing. Lawyer refuses to honour it because his client won't.	No details available.
54		Firm 1953	Rule 14	No details available.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
55		Firm 1968	Rule 14	No details available.
56		Firm 1955	Accounting matter. Discuss matters disclosed in auditor's report.	No details available.
57		Firm 1960	Discuss contents of newspaper article.	No details available.
58	Client	Sole practitioner	Failure to honour undertaking given on a real estate closing. There was litigation pending about other aspects of the deal so that the lawyer felt he should not have to settle on the undertaking matter without settling all the other issues.	Matter was subsequently settled.
59		Sole practitioner 1967	Rule 14	No details available.
60		Firm 1972	Rule 14	No details available.
61	Client	Sole practitioner 1968	Real estate negligent handling of mortgage transaction.	Lawyer was asked to attend on another date as one of the committee members disqualified herself.
62		Sole practitioner 1967	Application to Law Society under Regulation 11(2). Lawyer wants now to be able to accept client's trust funds after making assignment into bankruptcy.	No details available.
63		Sole practitioner 1974	Discipline Committee wanted to discuss lawyer's conduct in real estate transaction, lawyer failed to appear on invitation.	Formal complaint recommended sworn.

Case No.	Complainant	Type of Practice Location of Practice Date of Call	Nature of Complaint	Disposition
64	Lawyer	Sole practitioner 1968	Real estate matter where solicitor acted on both sides. Complainant's client alleged he was defrauded by real estate agent and the lawyer.	There was no evidence to substantiate his charge of fraud against the lawyer. Lawyer had failed to report to the purchaser. The Discipline Committee ordered that he submit the necessary reports. The real estate agent in this transaction was convicted and imprisoned
65		Sole practitioner 1964	Outstanding Discipline Committee costs still owing.	No details available.
66		Sole practitioner 1946	Failure to answer correspondence from Law Society. Lawyer had been disciplined in the past.	No details available.

Firm size of Accused

Sole practitioners	25	Date of Call of Accused	1973-1977	7	Location of Accused	Toronto	30
Partners	38		1970-1972	13		Ottawa	2
Associate	1		1960-1969	24		Other	34
Retired	1		1950-1959	17			66
Other	1		19---1949	5			
	66			66			

TABLE V
LAW SOCIETY OF UPPER CANADA FORMAL COMPLAINTS 1976

CHART A

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
1	Client	Sole practitioner	1958	Misappropriated clients funds having advanced funds on understanding that it was to be secured by a mortgage and never was, breached Ruling 14 - used trust monies of one client to pay another client's taxes.	Convocation Reprimanded in Convocation and Costs (1977) C.A. must cosign withdrawals from trust accounts, and file quarterly financial statements for 2 years.
2	Client	Sole practitioner	1957	Failed to maintain proper books and records, failed to carry out client's instructions in that client did not receive any registered security for its loan - told client did place mortgage when in fact he had not - misleading the client. Failed to maintain sufficient funds in trust account to meet obligations - misleading reports, falsified records, contrary to s. 18(8) of the Regulations.	Disbarred (1977) filed appeal, restored pending outcome.
3	Client	Sole practitioner	1966	Contravened Ruling 14 and failed to repay his client - failed to account for trust funds.	Reprimanded in Discipline Committee
4	Client	Sole practitioner	1960	Failed to reply to Law Society - Ruling 20.	Reprimanded in Discipline Committee
5	Client	Sole practitioner	1974	Counselled client to give false evidence - Ruling 1; received a payment not authorized by Legal Aid Act, improperly soliciting business.	Reprimanded in Convocation and costs (1977)
6	Lawyer	Sole practitioner	1948	Ruling 20 - failed to reply to Law Society correspondence	Reprimanded in Discipline Committee
7	Client	Firm	1955	Failed to answer Law Society's requests for information.	Reprimanded in Discipline Committee
8	Client	Sole practitioner	1953	Lack of communication with client on litigation matter - motor vehicle accident.	Reprimanded in Discipline Committee

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
9		Sole practitioner	1954	False income tax filing; misappropriated funds contravened Ruling 14, didn't give security for loan when he said he would, insufficient funds in trust account to meet his obligations; failed to cooperate with Law Society Auditor - S. 22(1) of Regulation conflict of interest not explained to client.	Disbarred.
10		Firm	1965	Convicted of 3 criminal offences (a) converting with intent to defraud (b) obstructing justice by causing witness to fabricate evidence (c) conspired to traffic a narcotic.	Disbarred 1976
11	Client	Sole practitioner	1962	Filed false accounting reports Form 2; insufficient funds in trust account; Ruling 14; failed to keep proper records; - transferred funds to general account from his trust account without client's being notified in writing s. 18(8)(c) of Regulations, failed to register on title a mortgage when instructed to do so.	Reprimanded in Convocation and costs 1976 monthly audited statements for twelve months
12	Client	Firm	1955	Failed to reply to Law Society requests for information in relation to complaints by members of the public.	Reprimanded in Discipline Committee and costs
13	Lawyer	Sole practitioner	1940	Ruling 7 - failed to honour undertaking. Lawyer's appeal of reprimand in Discipline Committee was dismissed by Convocation in 1977.	Reprimanded in Discipline Committee.
14	Client	Associate	1950	Failed to reply to Law Society letter.	Reprimanded in Discipline Committee.
15	Client	Not practising law	1954	Absented himself from his practice without making provision for the protection of his client's interest - trustee appointed to take possession of any property under the control of the solicitor as such property relates to the practice of law - failed to maintain proper books Regulation 19 - Regulation 20, failed to reply.	Reprimanded in Discipline Committee and costs.

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
16	Client	Sole practitioner	1960	Misappropriated money from client	Disbarred, 1976.
17	Client	Sole practitioner	1954	Member had been disciplined before several times - member misled client by telling him his case would come on for trial when none of the necessary preliminaries had been completed - misled client as to content of a document he was asked to execute - failed to carry out instructions of a solicitor with regard to a real estate transaction - Ruling 20 - failed to reply re a complaint over an estate matter - negligent.	Lawyer didn't appear went on in his absence Disbarred (1976)
18	Client	Firm	1953	Ruling 20 - failed to reply - didn't keep client informed	Reprimanded in Discipline Committee
19		Sole practitioner	1968	Alleged agreement between the lawyer and his client to refund to lawyer the amount of the deductible portion of the settlement proceeds received with regard to the society's Errors and Omissions Insurance.	Not established.
20	Lawyer and Client	Firm	1962	Failed to keep sufficient funds in trust account to meet obligations - borrowed money from clients for a company which he and his partner controlled without informing clients or advising them to obtain independent legal advice, misappropriated clients' funds, failed to honour undertaking to pay off existing mortgage and register the discharge thereof, stated to client he was making a sound investment when he should have known it was not, misrepresented clients about a mortgage when in fact it was not registered.	Disbarred May 21, 1976

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
21		Firm	1963	Misappropriated client's money, failed to keep sufficient money in trust account to meet obligations; borrowed from clients without their obtaining independent legal advice; falsely reported to client a mortgage was a good and valid one when in fact it was not registered.	Not established.
22		Sole practitioner	1973	Submitted accounts to Legal Accounts Officer of the legal Aid Plan which accounts were alleged to be overstated or falsely described.	Not established.
23	Client	Sole practitioner	1963	Ruling 14 - borrowed from a client for a company he controlled without making full disclosure to the client and without ensuring the client was independently represented.	Reprimanded in Convocation and costs, 1977
24		Sole practitioner	1963	Misappropriated clients monies, failed to account; made grossly excessive charges for his legal services, improperly charged as a disbursement air fare for wife to , failed to keep proper records and failed to keep sufficient money in his trust account to meet obligations.	Reprimanded in Convocation and Costs, 1976
25		Sole practitioner	1968	Signed his client's name on documents without a power of attorney; didn't describe himself as attorney; made false affidavits, failed to disclose all the facts within his knowledge with respect to real estate transactions in which he had a personal interest; also failed to make full disclosure to Law Society.	Reprimanded in Convocation and costs, 1976
26		Sole practitioner	1967	Alleged that lawyer while an assistant Crown attorney assisted an accused to defeat the charge against him knowing the accused had paid \$1000 to keep some relevant information from the court, let his office be used for the purpose of furthering the wrongdoing of the accused.	Not established

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
27		Sole practitioner	1954	Misappropriated client's money from his trust account; withdrew monies from his trust bank account on account of fee with no billing having been delivered contrary to S. 18(8) of Regulations; failed to maintain proper records; not enough money in trust account to meet obligations.	Disbarred, 1976
28		Sole practitioner	1973	Signed the name of a solicitor on an Assignment of Articles without the knowledge or consent of that solicitor; tendered to the Law Society a false Affidavit of Execution.	Disbarred, 1976
29		Sole practitioner	1956	Regulation 18(1) - failed to deposit funds received on behalf of his client in his trust account; misappropriated some of client's trust money; excessive charges for legal services. Discipline Committee found only the breach of regulation 18(1) established	Reprimanded in Discipline Committee and costs.
30		Sole practitioner	1968	Alleged that accounts he submitted to Legal Aid overstated the time and services rendered.	Not established.
31		Sole practitioner	1952	Failed to maintain proper books - S. 19 of Regulations; failed to maintain sufficient funds in trust account to meet trust obligations; improper disbursements from trust account S. 18(8) of the Regulations; failed to cooperate with Law Society's auditor; Regulation 14 borrowed from clients.	Reprimanded in Convocation 1976 and costs.
32		Sole practitioner	1969	Regulation 3(1) soliciting - alleged that solicitor sent an unsolicited letter to two law firms advising them of his services with respect to debt collection.	Not established.

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
33		Firm	1970	S. 19 of Regulations improper books; S. 18(1) of Regulations failed to deposit funds received on behalf of client in trust account; misappropriated client's money; swore and registered false mortgage documents knowing them to be false.	Disbarred, 1976
34		Sole practitioner	1954	Misappropriation; improper books and records; while acting for a client he had used trust funds of the client for his own purpose.	Disbarred, 1976

SUMMARY

Sole practitioners	= 25	1973-1976	= 3	Reprimanded in Discipline Committee	= 11
Firms	= 7	1970-1972	= 1	Reprimanded in Convocation	= 7
Associate	= 1	1968-1969	= 14	(1976)	= 4
Other	= 1	1950-1959	= 14	(1977)	= 3
	= 34	- - 1949	= 2	Disbarred	= 10
			<u>34</u>	(1976)	= 9
				(1977)	= 1
				Not established	
					- 6
					<u>34</u>

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
1		Firm	1970	Breach of Ruling 2 - conflict of interest, unauthorized practice by law clerk, misappropriated client's money.	Not established.
2		Firm	1957	Breach of Ruling 2 - conflict of interest, unauthorized practice by law clerk, misappropriated client's funds.	Reprimanded in Discipline Committee and Costs.
3	Lawyer	Sole practitioner	1968	Failure to honour undertaking	Not established
4		Sole practitioner	1964	Improper soliciting - sent 300 circulars on his letterhead - referred to the variety of legal services provided, Ruling 3.	Reprimanded in Discipline Committee.
5		Firm	1955	Failed to follow instructions of his client to wind up and report his services in connection with administration of estate.	Reprimanded in Discipline Committee and costs.
6		Firm	1948	Borrowed from clients contrary to Ruling 14 - improper advertising in newspapers and on a sign-board his firm name in connection with a private project.	Reprimanded in Discipline Committee and costs.
7			1956	Failed to follow client's instructions, failed to answer letter from Law Society; failed to file form 2 reports or statutory declaration s. 20 of Regulation.	Disbarred.
8		Sole practitioner	1955	Failed to reply to Law Society letters; failed to follow client's instructions, failed to account; borrowed from clients.	Reprimanded in Discipline Committee and costs.
9		Sole practitioner	1959	Failed to file Form 2, failed to maintain the quarterly filing requirements ordered by Convocation 1975 - acquired an interest of his client without ensuring they were independently represented.	Reprimanded in Convocation and must file quarterly audited financial statements for 2 more years.

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
10		Firm	1971	Failed to reply to Law Society, Ruling 20.	Reprimanded in Convocation.
11		Sole practitioner	1951	Failure to file statutory declaration required by S. 20 of Regulations.	Reprimanded in Convocation.
12		Firm	1953	Solicitor given conflicting evidence in cross-examination of his affidavit and at trial.	Not established.
13		Sole practitioner	1963	Failure to report and statutory declaration required by S. 20 of Regulations.	Reprimanded in Discipline Committee and costs.
14		Sole practitioner	1968	Originated as an invitation to attend, Committee felt a complaint should be sworn; failure to follow client's instructions to institute divorce; misled client into thinking she was his client.	Reprimanded in Discipline Committee and costs.
15		Sole practitioner	1962	Breach Regulation 1, paragraph 3, coerced clients to pay legal fees; acted against interests of clients; counselled client to be a party to offence of tax evasion.	Reprimanded in Discipline Committee and costs.
16		Firm	1941	Failed to keep proper books, S. 19 of Regulations, insufficient trust funds, failed to cooperate with Law Society's auditor.	Reprimanded in Discipline Committee and costs.
17		Sole practitioner	1951	Failed to reply to letters from Law Society concerning complaint by client.	Reprimanded in Discipline Committee.
18		Sole practitioner	1972	On a criminal matter, lawyer failed to appear in court. This was previously the matter of an invitation but the Discipline Committee felt it should be a matter for a complaint.	Not established.
19		Sole practitioner	1955	Ruling 14 situation - allowed cheques to be drawn on his trust account without being signed by lawyer contrary to S. 18(1)(b), falsified his accounting records, and false form 2 filed, established Ruling 14 and false form 2.	Reprimanded in Discipline Committee and costs.

Case No.	Complainant	Accused and Location	Date of Call	Nature of Complaint	Disposition
20		Sole practitioner	1968	Failure to inform Law Society of termination of fiscal year, S. 20(2) of Regulations - failure to file report and statutory declaration.	Not established.
21		Sole practitioner	1940	Misappropriated \$16,000 from clients at date of hearing there were no trust shortages; made an assignment in Bankruptcy after borrowing money from clients and giving them his personal guarantee that loans would be repaid. No other security for loans, Lawyer's business went soon. Lawyer continued to solicit funds from clients after knowing his financial position was poor.	Disbarred.
22		Sole practitioner	1973	Since being recalled lawyer had failed to file any of the reports required by the Law Society.	Reprimanded in Discipline Committee - fulfilled filing requirement
23		Sole practitioner	1953	Failure to keep his client fully advised of developments in a civil action and failure to reply.	Complaint abandoned. New complaint issued, 1978, dealing with these and other matters.

SUMMARY:

Sole practitioners	= 15	Toronto	= 16	1973-1977	= 1
Firms	= 7	Other	= 7	1970-1972	= 3
Unknown	= 1		= 33	1960-1969	= 6
	= 23			1950-1959	= 10
				19---1949	= 3
					33

Reprimanded in Discipline Committee	= 13
Reprimanded in Convocation	= 2
Disbarred	= 2
Not established	= 5
Other	= 1
	23

PRIOR ENCOUNTERS WITH THE DISCIPLINE COMMITTEE IN PERIOD JULY 1969-NOVEMBER 1977
FOR MEMBERS APPEARING BEFORE IT IN 1976

CHART B

Case No.	Year	Nature of Complaint	Disposition
1	None		
2	None		
3	1971	Failure to reply	Not established
	1973	Failure to reply	Reprimanded in Discipline Committee
4	1975	Failure to diligently pursue action	Not established
5	None		
6	1974	Invitation delays in handling a complaint from his client to Law Society	
7	1972	Failure to reply, failure to honour undertaking - similar	Reprimanded in Discipline Committee
8	1977	Failure to reply and failure to keep his client fully advised	Complaint abandoned, new complaint sworn 1978
9	1974	Failure to file Form 2 Report	Adjourned sine die undertaking to file
	1973	Misappropriation \$1000, improper books, similar	Reprimanded in Discipline Committee
10	1974	Failure to file	Not established
	1974	Overstated to Legal Aid services rendered under plan similar	Reprimanded in Discipline Committee and undertook not to be on legal aid panel for 10 years.
	1973	Failure to reply	Reprimanded in Discipline Committee
	1970	Abuse of legal aid	Reprimanded in Convocation and Costs
11	1970	Failed to maintain proper books (similar)	Reprimanded in Discipline Committee
12	1977	Failure to follow clients instruc- tions	Reprimanded in Discipline Committee and costs
	1975	Failure to reply similar	Reprimanded in Discipline Committee
13	1972	Invitation - Ruling 2 was impressed upon solicitor	
14	1972	Failure to reply similar	Dismissed
15	None		
16	None		
17	1974	Failure to follow client's instruc- tions - misled clients same	Suspended 3 months and costs
	1973	Failure to reply - same	Reprimanded in Convocation and costs
	1972	Failure to reply - same	Adjourned sine die Solicitor to file reply
	1970	Failure to maintain proper books	Reprimanded in Discipline Committee

		Failure to maintain sufficient funds in trust account	
	1969	Failure to reply and carry out client instructions	Reprimanded in Discipline Committee
18	None		
19	1977	Failure to honour undertaking	Not established
20	1974	Failure to reply	Reprimanded in Discipline Committee
	1972	Failure to reply and failed to report to his clients	Reprimanded in Discipline Committee and costs
	1970	Failure to reply	Decision reserved and gave under- taking
	1969	Invitation - Lawyer reprimanded for his tardiness	
21	None		
22	None		
23	None		
24	None		
25	None		
26	None		
27	None		
28	None		
29	None		
30	None		
31	None		
32	None		
33	1974	Failure to reply	Not established

1976 Summary

18 or 55% had not appeared before the Discipline Committee in the past.

15 or 45% had encountered the Discipline Committee before

PRIOR ENCOUNTERS WITH THE DISCIPLINE COMMITTEE FOR MEMBERS APPEARING
BEFORE IT IN 1977

CHART C

Case No.	Year	Nature of Complaint	Disposition;
1	None		
2	None		
3	1976	Alleged lawyer involved in agreement to collect deductible portion of Error's and Omission Insurance	Not established
4	1972	Invitation - lawyer wrote letter to complainant that was a threat and not in good taste.	
	1969	Invitation - to discuss lawyer's advertisement in Reports	
5	1976	Failure to reply	Reprimanded in Discipline Committee and costs
	1975	Failure to reply	Reprimanded in Discipline Committee
6	None		
7	1975	Failure to account to client for money owing Failed to follow Regulations with respect to trust funds and book and records Failed to cooperate with Law Society auditors Failed to reply	Reprimanded in Discipline Committee and costs required to file audited financial statements for 3 years
	1974	Failure to file Section 20 of the Regulations	Not established
	1973	Failed to account to client for money which he had in his trust bank account	Not established
	1971	Failure to reply Failure to file for 2 years	Reprimanded in Discipline Committee Discipline Committee concerned about lawyer's alcoholic problem - ensure he continue treatment
	1970	Failure to Reply	Reprimanded in Discipline Committee Lawyer gave undertaking not to receive funds from clients on trust basis
	1967	Failed to reply, failed to report failed to pay Law Society costs and failed to account to client	Lawyer failed to appear - Discipline Committee recommended lawyer be disbarred Convocation referred matter back to Committee Discipline Committee recommended that Lawyer undertake to work for his counsel as an employee and not to practice law in any other way without obtaining Discipline Committee consent

1977 - p. 2

Case No.	Date	Nature of Complaint	Disposition
7	1967	Failed to maintain proper books and records insufficient money in trust account, failed to deposit trust money in trust account.	Reprimanded in Convocation and costs and quarterly audited statements.
8	None		
9	1975	Failure to maintain proper books and records, failed to record in his books remittances from legal aid, borrowed from clients, insufficient money in trust account to meet obligations, failure to file.	Reprimanded in Convocation and costs and monthly filing requirements re trust accounts and quarterly audited financial statements for 2 years.
10	None		
11	1974	Failure to file, s. 20 of Regulations, lawyer gave explanation which was accepted by Discipline Committee	Not established
12	None		
13	1973	Failure to reply	Complaint established - secretary to follow up
14	None		
15	None		
16	1974	Failure to file	Complaint established Discipline Committee decided to take no further action.
17	1975	Invitation - outstanding discipline costs unpaid - lawyer signed letter directing legal aid to pay Law Society out of fees owing to him by Legal Aid.	
	1975	Failure to file	Not established
	1971	Failure to maintain office facilities so that his clients could communicate with him in a professional manner, failure to report to clients and failure to protect their interests, failure to file statement of public accountant.	Reprimanded in Convocation and costs
	1970	Failure to reply and failure to follow client's instructions	Reprimanded in Convocation
	1969	Invitation for failure to reply.	
	1968	Failure to reply and failure to carry out client's instructions	Reprimanded in Discipline Committee

1977 - p. 3

Case No.	Date	Nature of Complaint	Disposition
18	None		
19	None		
20	1969	Invitation to discuss his advertisement in Reports	
21	None		
22	1976	Invitation - Solicitor had failed to pay for parking tickets for which he was responsible - Discipline Committee felt his conduct was improper	
23	1976	Failure to communicate with client his progress on her case.	Reprimanded in Discipline Committee

1977 SUMMARY:

11 or 46% had not been before the Discipline Committee on other occasions.

12 or 52% had appeared before the Discipline Committee on other occasions.

MATTERS DISPOSED OF PURSUANT TO
S. 35 OF THE LAW SOCIETY ACT * (1976)

CHART D

October, 1976, Convocation designated the Standing Committee on Discipline as the Committee of Convocation to inquire pursuant to s. 35 as to whether a lawyer was incapable of practising law.

Committee found the member incapable of practising law by reason of mental illness and recommended her rights and privileges as a member be suspended.

Sole practitioner in _____, called 1954, medical evidence was given indicating the member suffered from paranoid schizophrenia. The member had delusions of grandeur. She felt she was being persecuted by certain persons.

Other matters for which the member appeared before the Discipline Committee (back to July, 1969)

- (a) 1973 failure to file (Reprimanded by Discipline Committee)
- (b) 1970 failure to reply (Reprimanded by Discipline Committee).

*

The Law Society Act, R.S.O. 1970, c. 238

35. If a member has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by a committee of Convocation incapable of practising law as a barrister and solicitor by reason of age, physical or mental illness including addiction to alcohol or drugs, or any other cause, Convocation may by order limit or suspend his rights and privileges as a member for such time and on such terms as it considers proper in the circumstances.

CHART E

MEMBERS STRUCK OFF THE ROLLS - 1945-1976

1945	3	1955	2	1965	6	1975	2
1946	3	1956	3	1966	3	1976	12
1947	2	1957	7 (2 resigned)	1967	3		
1948	4	1958	2	1968	3		
1949	0	1959	4	1969	6 (2 resigned)		
1950	4	1960	10	1970	13 (1 resigned)		
1951	3	1961	4	1971	3		
1952	0	1962	10	1972	1		
1953	5	1963	10	1973	4		
1954	2	1964	7	1974	7 (2 resigned)		
10 year Totals:	26		59		49		

CHART F
SUMMARY OF REASONS FOR BEING STRUCK OFF

Year	Total	Misappropriation	Criminal Conviction	Other	Readmitted No.	Year
1976	12	6	3	1 breach of Ruling 14 1 incapacity 1 deliberately misleading client and completely neglecting his interests (negligence)		
1975	2			1 failed to account to client for money received from sale of property and failed to keep proper books 1 conflict of interest which resulted in client suffering great loss		
1974	7	5		2 permitted to resign		
1973	4	2	1	1 fraudulent misrepresentation	1	1977
1972	1			*1 professional misconduct	1	1977
1971	3	2		1 failure to produce record to auditors		
1970	13	5	6 (2 tax evasion)	1 failure to keep financial records 1 permitted to resign		
1969	6	3	1	2 permitted to resign		
1968	3	2	1		1	1970
1967	3	3			1	1977
1966	3	2		1 failure to reply, failure generally to discharge professional duties to client	1	1972
1965	6	3	2	1 permitted to resign (swore false affidavit)	1	1973 1968

Year	Total	Misappropriation	Criminal Conviction	Other	Readmitted No.	Year
1964	6	3	3		1	1970
1963	10	10			1	1973
1962	10	9	1		1	1966
1961	4	4				
1960	10	7	3			
SUMMARY	103	66	21		9	

TABLE VI - LAW SOCIETY OF UPPER CANADA
INVITATIONS TO ATTEND BY CAUSE OF INVITATION
(1976 and 1977)*

	<u>n = 56</u> <u>1976</u>	<u>n = 66</u> <u>1977</u>	<u>n = 122</u> <u>TOTAL</u>
Ruling 14 (Borrowing from clients) ⁸⁴	20	32	52
*Delay	6	2	8
Breach of Ethical Rules	6	11	17
*Failure to Communicate	4	2	6
*Failure to Appear in Court	4	2	6
Failure to Answer Law Society Correspondence (R. 20)	4	4	8
Breach of Undertakings	4	4	8
*Negligence	3	2	5
*Failure to Follow Instructions	2	0	2
Advertising	2	3	5
*Incompetence	0	1	1
Conflict of Interest	1	0	1
Other non-competence	0	4	4

* Source: Table IV

TABLE VII - LAW SOCIETY OF UPPER CANADA
FORMAL COMPLAINTS BY CAUSE OF COMPLAINT
(1976 and 1977)*

	<u>1976</u>	<u>1977</u>	<u>Total</u>
Ethical breach	8	3	11
Breach of trust	6	0	6
Misappropriation of funds	6	3	9
Failure to Reply to Law Society Letters	6	8	14
Failure to file annual accounting reports or maintain required books	3	4	7
Breach of Undertaking	1	1	2
Advertising	1	1	2
Ruling 14 (Borrowing from clients)	1	2	3
Failure to communicate with client or follow instructions	1	1	2
Total disregard of practice	<u>1</u>	<u>0</u>	<u>1</u>
	n=34	n=23	n=57

* Source: Table V

TABLE VII^f

ICAO MEMBERS EXPELLED AND SUSPENDED BY
ICAO RETAINING PAC LICENCE (April, 1968-December, 1975)

Members expelled by ICAO ^(a)	2
Members suspended by ICAO ^(b)	<u>4</u> <u>6</u>

(a) One expelled for repeated failure to respond to letters on professional conduct matters. Other expelled after disciplinary hearing where more evidence available than was available for the prior PAC hearing.

(b) Each of four suspended members will be eligible for reinstatement upon completion of educational requirements, at which time suspension order will be rescinded.

* Source: Letter from Peter Yardley (Director-Ethics, I.C.A.O. to P.O.C. (October 11, 1977) and letter from Yardley to P.O.C. (January 6, 1977)

TABLE IX
CHART A

I.C.A.O.

Subject of Complaints Received
(1975 and 1976)*

	% (n=200 approx.)
Professional Standards	17.50
Tax Evasion	.90
Breach of By-laws	15.25
Failure to Respond to Professional Conduct	
Committee letters	1.35
Criminal conviction	.45
Objectivity (independence)	.45
Advertising Solicitation	26.50
Fees ¹	3.00
Retaining books, documents ²	3.60
Promptness of service	13.00
Confidentiality	.90
Failure to settle debt	1.35
Professional courtesy ³	5.85
Doubt as to honesty, propriety of actions	5.85
Legal actions, not yet resolved ⁴	4.05
	<u>100.00</u>

*Source: Letter from Peter Yardley
(Director-Ethics, I.C.A.O.) to
P.O.C. (October 11, 1977)

NOTE: The following notes were included in Yardley's October 11, 1977, letter.

1. The Institute has no jurisdiction over fees; these cases, which are investigated, may contain allegations such as failure to do the work for which a charge has been made.
2. The retention of a client's books and records is discouraged by the Institute; a member may have a legal lien on such material, however, and if so it is not interfered with.
3. This includes complaints about lack of communication between members, and failure to provide information to a successor.
4. There are a number of cases where we are aware of civil court proceedings, where the actions of members have been complained of. In such cases we follow up on gathering information but, based on legal advice in each case, we do not usually take action on a case which is sub judice. Unfortunately, some of these cases take considerable time for resolution in the Court.

TABLE IX

CHART B

INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

Sources of Complaints Received 1975 and 1976*

	%
Clients	25
Other Members	36
Third Parties	6
Staff	30
Self-Reported	3
	<u>100**</u>

* Source: Letter from Peter Yardley
(Director-Ethics, I.C.A.O.) to
P.O.C. (October 11, 1977)

** NOTE: All percentage figures are approximations based on
Yardley's personal detailed analysis. The figures do not
take into account possible duplication (e.g. member reports
a matter already noticed by staff; two independent members
report same complaint)

TABLE IX
CHART C

I.C.A.O.

Sources of Complaints by Subject Matter of Complaints
(1975 and 1976)*

	Clients	Other Members	Staff	Complaints received on this subject n = 200 approx.
	%	%	%	%
Professional standards	20	75	5	17.50
Tax evasion	-	50	50	.90
Breach of by-laws	-	12	85	15.25
Failure to respond	-	-	100	1.35
Criminal conviction	-	-	100	.45
Objectivity	100	-	-	.45
Advertising/solicitation	-	57	38	26.50
Fees	100	-	-	3.00
Retaining books	100	-	-	3.60
Promptness of service	93	7	-	13.00
Confidentiality	100	-	-	.90
Failure to settle debt	66	33	-	1.35
Professional courtesy	15	85	-	5.85
Doubt as to honesty, propriety	23	38	38	5.85
Legal actions not resolved	22	-	78 **	4.05

* Source: Letter from Peter Yardley
(Director-Ethics, I.C.A.O.) to
P.O.C. (October 11, 1977)

** The cross addition does not always total 100%, since this is
a partial table and there are a few cases where time has not
allowed of identification of source.

TABLE IX

CHART D

I.C.A.O.

Complaints Received by Firm
Size of Professional Complained Against (1975-1976)*

	<u>%</u>
Sole proprietors	29
Small and Medium sized firm**	43 (approximately evenly
Large firms***	21 divided)
Members not in practice	3
Students	2
Not identified	2
	<u>100</u>

- * Source: Letter from Peter Yardley
(Director-Ethics, I.C.A.O.) to
P.O.C. (October 11, 1977)

Yardley notes that there may be a bias to overrepresent individuals as complaints are made and taken up with members as individuals.

- ** Yardley classifies firms of 1-3 partners as "small", and 4-30 partners as medium. He estimates that each of these categories comprises 25% of I.C.A.O. members in public practice.

- *** Yardley classifies firms of 30 or more (or normally 50 or more) as "large". He estimates that 8 or 10 such large firms account for 40-50% of I.C.A.O. members in public practice.

TABLE IX

CHART E-1

Percentage of Gross Fees Earned by
CA Firms of Different size, by Client Groups*

Client Group	Number of CAs per firm							
	1	2	3	4-5	6-10	11-25	26-150	151+
Businesses with total world-wide sales of								
(1) \$0 - \$1,000,000	76.6%	76.0	71.9	67.6	68.8	64.6	41.3	19.6
(2) \$1,000,001 - \$25,000,000	9.7	13.3	17.4	22.4	19.0	21.9	34.0	30.8
(3) \$25,000,001 +	0.9	0.2	0.0	1.3	0.9	2.6	13.0	42.2
All Businesses	87.2	89.5	89.3	91.3	88.7	89.1	88.3	92.6
Federal Government	0.4	0.1	0.2	0.1	0.7	0.2	0.0	1.2
Provincial Government	0.1	0.2	0.6	1.1	0.1	0.6	1.0	0.2
Local Government	0.8	2.2	1.4	1.0	4.6	3.1	0.3	1.4
Individuals	8.7	6.2	5.6	4.8	4.7	3.7	8.3	2.0
Non-profit Institutions	2.8	1.9	2.8	1.6	1.2	3.3	2.0	2.6

* Source: Survey of Accounting Firms, Professional Organizations Committee.

TABLE IX
CHART B-2

Number of C.A. Firms, by Size, That Receive Zero Percent of Their Gross Fees, or Fifty Percent or More of Their Gross Fees From Business Clients of Varying Size or from Individuals*

Client Group	Number of CAs in firm							
	1	2	3	4-5	6-10	11-25	26-150	151+
Businesses with total world-wide sales of								
(1) \$0-\$1 million	16	0	0	0	0	0	0	0
-A	223	52	24	24	9	4	1	0
-B								
(2) \$1 million-	188	24	6	4	1	1	0	0
\$25 million	9	0	0	0	0	0	0	0
-A								
-B								
(3) \$25 million+	314	92	49	50	23	12	0	0
-A	3	0	0	0	0	0	0	0
-B								
Individuals	126	25	12	19	4	5	0	1
-A	6	0	0	0	0	0	0	0
-B								
Total number of firms	319	93	49	58	27	16	3	5

Notes: See Table 3

* Source: Survey of Accounting Firms, Professional Organizations Committee

TABLE IX
CHART E-3

Weighted Average Distribution of Gross Fees for all CA firms by Selected Client Groups *

Businesses with total world-wide sale of		
(1) \$0 - \$1,000,000	46.4%	
(2) \$1,000,001 - \$25,000,000	24.4	
(3) \$25,000,0001 +	19.7	
All Businesses	90.5	
Individuals	4.5	

* Source: Survey of Accounting Firms, Professional Organizations Committee.

TABLE X

CHART A

I.C.A.O.

Cases Before Professional Conduct Committee of I.C.A.O. 1975-1976*

	<u>1975-1976</u>
Conduct and competence	43
Advertising and solicitation	39
Breaches of By-law 97**	10
Delay in transfer of records or information	8
Non-members using designation	1
Interpretations of rules and by-laws and other opinions requested by members	36
Recommendations to Council***	10
Name approvals	18
Part-time office approvals	2
Miscellaneous	23
	<u>190</u>

* Source: I.C.A.O. Report of Committee Chairmen for supplement to the annual report of the President and Council for the year ended February 29, 1976.

** 97 No practising member shall offer employment to any person who intends to apply for registration or re-registration as a student, and no applicant shall be registered or re-registered

(a) unless the office of the practising member in which the applicant is to be employed is, in the opinion of the council (such opinion to be secured in advance), qualified to give him proper practical experience and instruction, or

(b) if as a result of such registration or re-registration the total number of students employed in such office would exceed three for each member or for each eligible licensee, as the case may be, in such office, or such lesser number of students as may be set by the council in particular cases; students who have completed the required period of service and have written the final examinations shall be excluded in determining the number of students permitted.

*** Includes the provision of assistance to Council in the drafting of Council Interpretation CI204A -- Objectivity in Audits Under the Election Finances Reform Act.

TABLE X

CHART B

I.C.A.O.

Results of Consideration by Professional Conduct Committee (1975-1976)

	<u>%</u>
Member charged - subsequently expelled by discipline committee	3.2
Member charged - subsequently suspended by discipline committee	12.9
Member charged - subsequently reprimanded and required to take courses by discipline committee	9.7
Admonished informally by professional conduct committee	12.9
Errors in financial statement presentation pointed out by professional conduct committee	12.9
No cause for action	19.4
No jurisdiction (referred to another provincial institute)	3.2
Pending at end of 1976*	<u>25.8</u> <u>100.0</u>

- * These cases were pending at the end of 1976, either awaiting investigators' reports or awaiting information on the outcome of Court actions. Some of these cases, relating to Court action, were still not disposed of at the end of 1977.

Source:

Letter from Peter Yardley, Director-Ethics, I.C.A.O. dated March 21, 1978.

Yardley bases this information on an analysis of approximately 80% of the "professional standards" cases in 1975 and 1976 Calendar years.

Thirteen members and two students attended before the committee during the year as compared to seven members in the previous year. In four cases that arose, after preliminary consideration by the full committee of the circumstances of the complaint received, special investigators, chosen from the committee's panel of investigators, were appointed to carry out an investigation of the member's practice.

With respect to six of the matters considered by the committee, charges were laid against the member involved and with respect to seven other matters, informal admonishments were administered.

...

The sub-committee structure that was established within the committee in the previous year assisted greatly in improving the efficiency and effectiveness of the committee and in easing the strain of the heavy workload. Accordingly, this structure was continued during the year with some rearrangements of responsibilities in an attempt to equalize the workload. The responsibilities of the four sub-committees are now as follows:

1. matters of objectivity, solicitation and retention of records;
2. recommendations to Council with respect to part-time offices, offices of convenience and name approvals;
3. matters related to advertising and recruitment;
4. matters related to competence and conduct.

Unanimous decisions of a sub-committee are considered by the full committee and are normally ratified without variation. If a sub-committee is unable to arrive at a unanimous decision the matter is referred to the whole committee.

This year, for the first time, the right to appeal a decision of the Appeal Committee granted by a by-law change in 1972 was exercised by the committee and its appeal was successful ..." 114

Table XI (Charts A and B) presents data about the activities of the discipline committee.

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TABLE XI
CHART A
I.C.A.O.

Complaints Handled by Discipline Committee (January 1972-December, 1976)*

(a) <u>Origin of Complaints</u> (n=30)	<u>n</u>
Institute Action**	9
Members (or firms)	10
Clients	6
Staff (breach of by-laws)	3
Law Society	2
	<u>30</u>

(b) <u>Category of Complaints</u> (n=30)	<u>n</u>
Professional Standards	17
Tax Evasion or other offences under the Income Tax Act	5
Breach of by-laws	3
Failure to respond to letters on professional conduct	2
Criminal conviction	1
Lack of independence in an audit engagement	1
Advertising/solicitation	1
	<u>30</u>

(c) Persons Accused before Discipline Committee by Year of Qualification¹
Firm Size, and Category of Complaint²

(i) Sole Proprietors (n=13)	<u>n</u>	<u>Year of Qualification</u>
Professional standards	9	1933 - 1
Tax related convictions	3	1937 - 1
Failure to respond to letters	1	1947 - 1
	<u>13</u>	1950 - 3
		1951 - 1
		1954 - 2
		1958 - 1
		1962 - 1
		1965 - 1
		1966 - 1
(ii) Small practices*** (n=5)	<u>n</u>	
Professional standards	5	1944 - 1
	<u>5</u>	1947 - 1
		1950 - 1
		1960 - 2
(iii) Medium-sized practices ^{***} (n=5)	<u>n</u>	
Professional standards	1	1948 - 1
Advertising/soliciting	1	1950 - 1
Breaches of by-laws	3	1953 - 1
	<u>5</u>	1962 - 2

(iv) Large firms (n=1)	<u>n</u>			
Objectivity (independence)	1	1950	-	1
(v) Members not in practice (n=6)	<u>n</u>			
Tax related convictions	2	1948	-	1
Associated with false statements	1	1956	-	1
Associated with false declarations	1	1958	-	1
Theft, forgery	1	1959	-	1
Failure to respond to letters	1	1961	-	1
	<u>6</u>	1970	-	1

(d) Disposition of Disciplinary Proceedings

Members expelled	8
Members suspended	9 3
Reprimanded and required to take educational courses	7
Reprimanded	5
Allowed to resign	1
	<u>30 4 -</u>

* Source: Letter from Peter Yardley (Director-Ethics, I.C.A.O.) to P.O.C. (October 11, 1977) and Letter from Yardley to P.O.C. (January 6, 1977)

** Investigation of members involved in Atlantic Acceptance case; published reports of court decisions brought to attention of Professional Conduct Committee by staff :though some of these may have been noted first by others)

- 1 Yardley notes that year of qualification usually indicates length of time member has been practising although may be exception where member returns after an absence.
- 2 Yardley notes no demographic pattern in these complaints: as a substantial proportion of membership practises in Toronto many complaints come from that metropolitan area but complaints are received from "virtually all areas in which members practice".
- 3 Yardley notes that many of the suspended members must complete special educational courses or face additional period of suspension until courses are complete.
- 4 Yardley notes that costs of the disciplinary action are charged to the member disciplined "in most cases". Two of these dispositions (expulsion, suspension) are currently under appeal within Institute's appeal procedures.

TABLE XI

CHART B

I.C.A.O.

Complaints Handled by Discipline Committee (Calendar Years 1975-1976)

(a) <u>Origin of Complaints</u> (n=15)	<u>n</u>
Institute Action	2
Members or firms	3
Clients	6
Staff (breach of by-laws)	3
Law Society	1
	<u>15</u>
(b) <u>Category of Complaints</u> (n=15)	<u>n</u>
Professional Standards	7
Tax evasion or offences under the Income Tax Act	2
Breach of by-laws	3
Failure to respond to letters	2
Solicitation	1
	<u>15</u>
(c) <u>Persons Accused before Discipline Committee by Year of Qualification Firm Size, and Category of Complaint</u>	
No information available.	
(d) <u>Disposition of Disciplinary Proceedings</u> (n=15)	<u>n</u>
Members expelled	4
Members suspended	3
Reprimanded, required to take courses	3
Reprimanded	5
	<u>15</u>

Source:

Letter from Peter Yardley, Director-Ethics, I.C.A.O., March 21, 1978.

Yardley notes that it might be misleading to attempt to correlate statistics on professional conduct matters (Tables IX and X) with discipline committee activities for the same period. He notes that the Institute has had a history of delays "due to requests for adjournment made by defence counsel which Institute counsel has advised should be granted". He indicates that there is sometimes abnormal delay therefore, between the laying of a charge and the hearing of the charge by the discipline committee.

TABLE XII
PUBLIC ACCOUNTANTS' COUNCIL
Discipline Cases - January 1, 1975-August 5, 1977

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
1	Newspaper report of appeal from ICAO discipline and later ICAO notice to PAC of discipline against accused	Feb.-March 1974	C.A. partner in firm	Accused accepted gifts and loans from client while he was responsible partner of the firm - S. 18(3) - conduct disgraceful to him in his capacity as a public accountant	Enforcement committee (E.C.) decided matter to go to Council-inquiry held-April, 1975- ICAO had suspended for 9 months and time was over in Nov. 1974-guilty s. 18(1)(d)-but no revocation: time lapse since conduct-accused's admission of disgraceful conduct-good behaviour since	No revocation but in July, 1975, accused himself cancelled licence rather than renew it.
2	ICAO notification accused had resigned from ICAO	January 1974	C.A.	Accepting benefits from client - S. 18(3)-involved with accused in complaint 1	Further information to fact accused had resigned from ICAO, only provided April 1975 (ICAO had been unsure if could release it) E.C. recommended formal inquiry after adjournment (by accused)-hearing Nov. 1975-accused resigned	Accused resigned with undertaking he would not reapply
3	Letter from law firm	September 20, 1974	Sole accountant public accountant in (under 1950 grandfather clause)	Complaint arising from accused's audit of a firm	Being held by PAC pending further court proceedings	Pending
4	ICAO advised PAC of bankruptcy of accused		C.A. with large firm	Bankruptcy and charge of fraud (bankruptcy August 17, 1972) (s. 18(1)(c)) accused expelled from ICAO, May 30, 1973	E.C. referred matter to Council-licence revoked March 1, 1973-accused reappointed May, 1975-application denied September, 1975	License revoked and application for re-admission denied

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
5	ICAO advised PAC of completed disciplinary action	June 3, 1975	C.A.-sole accountant	Accused had been suspended 2 years by ICAO or until specified professional development (PD) courses had been completed (S.18(1)(d))	Council found accused guilty under 18(1)(d) and accused advised to take ICAO audit and negligence courses, and that revocation usually followed in such cases. E.C. decided on advice of their lawyer that should be no further action as PAC action was for offence already punished by ICAO-E.C. decided (December, 1975) not to reopen matter.	Finding of guilty under S. 18(1)(d) - no sanction specifically imposed though conviction record to remain in file
6	Newspaper article	October 16, 1973	C.A. - sole accountant	Conviction of accused for tax evasion (accused expelled from ICAO effective May 23, 1974) (S. 18(1)(a))	No meeting of E.C.-Registrar sent matter directly to Council - licence not revoked at January, 1974 meeting [ICAO wrote in June, 1975 to inform PAC 18 month review over, and accused expelled effective May, 1974-as facts same as ones acted on before decided December 1975 not to reopen]	No sanction
7	ICAO notified PAC of charges by ICAO. PCC pending against accused	June 20, 1975	C.A.-sole practitioner	Quality of work-giving opinion without sufficient information to warrant it-failing to conduct necessary verifications in June 1976-ICAO informed PAC accused suspended until completes PD course-confirming letter sent by ICAO, January, 1977 (S. 18(1)(d))	E.C. met December, 1975 and deferred matter-noted accused's licence expires April, 1976	Pending before PAC until further notice from ICAO

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
8	ICAO informed PAC inadvertently (copy sent with copy of Check Mark) of suspension-formal notice June 3, 1975	December, 1974 June 3, 1975	C.A. - sole practitioner	Association with clients' reports he knew or should have known false-expressing opinion without sufficient information accused-suspended by ICAO 2 years or until PD course and exam taken-violation S.18(1)(d) some suggestion accused "involved with fraudulent use of clients' funds and securities"	E.C. noted accused licensed to April, 1976- E.C. member examined accused's work-work found inadequate-Council hearing for offence under S.18 (c) (April, 1977)- accused assured Council he would complete 3 named CICA courses	No further action (on accused's undertaking to take CICA courses)
9	ICAO informed PAC of charges heard in March at ICAO	May 23, 1975	C.A.-sole practitioner	ICAO charge of failure to obtain sufficient information without expressing opinion warrant to retain in files enough documentation to prove work done by accused "in several cases"-ICAO convicted, March, 1975 and sentenced accused to PD courses-suspension in interim (S.18(1)(d))	E.C. considered matter December, 1975 and deferred to await ultimate result at ICAO-January, 1977-accused still had not fulfilled ICAO requirements-was applying for extension there-pending there so far as PAC information knows	Pending before E.C.
10	Client complaint by letter (first someone on behalf of client-later client personally)	May 15, 1975	C.A. - sole practitioner	Breach of trust by accused when acting as mortgage broker for complainant (S. 18(1)(d).)	E.C. considered matter-Facts unclear-discipline should not be used as club against accused who was being sued civilly, though agreed, if facts as found by courts indicated "conduct disgraceful", discipline would be appropriate	Complainant advised January 8, 1976 discipline inappropriate at present.

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
11	Newspaper clipping sent by member of PAC	August 25, 1975	C.A. - sole practitioner	Accused had pleaded guilty to conviction under Income Tax, C.P. and Unemployment Insurance Acts (S. 18(1)(a))	December 8, 1975 E.C. recommended Council act for violation S. 18(1)(a). March 25, 1976, ICAO sent final decision to reprimand and fine accused and publish discipline. Council met April, 1976 - because of evidence and penalties elsewhere, re-vocation not appropriate. Acc. reprimand advised	Severe reprimand by Council
12	Individual C.A. who took over a client who had used a bookkeeper and accused	October 2, 1975	C.A. - sole practitioner	Accused had been suspended by ICAO - now operating with a bookkeeper and keeping service and accused holding out bookkeeper as licensed or allowing bookkeeper to do licensed work (S. 18(1)(d))	January 30, 1976 - E.C. hearing and accused and bookkeeper attended - assurance given by accused of future compliance with Rules of Professional Conduct for Public Accountants	Complainant advised of E.C. hearing and accused's undertaking - no further action
13	ICAO informed PAC of completed discipline procedure	December 11, 1975	C.A. - sole practitioner	ICAO found accused incompetent - signing reports he should not have known false, or misleading (ICAO found him guilty of professional misconduct (S. 18(1)(d)) - ICAO ordered re-education.	December 23, 1975 - E.C. found ICAO had no transcript so whole case would have to be retried "somehow" got to Council for January 30, 1976 meeting and noted accused's licence to expire April 30, 1976 so matter deferred	Deferred by Council pending outcome of ICAO discipline (licence in fact renewed in April, 1976 because member then in good standing with ICAO, therefore no further action required.)
14	Law firm letter written to PAC	February 2, 1971	C.A. - sole practitioner	Accused had drastically overvalued some shares and failed to report company charter had been cancelled (S. 18(1)(d))	ICAO informed (Feb. 1971) - at Council (October, 1971) accused's licence revoked to April 30, 1972 but agreed PAC would grant licence May 1, 1972 (suspension) - accused appealed to courts - June, 1972 - accused applied for and granted	Accused suspended.

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
14					new licence (though court appeal still pending) July, 1972--appeal dismissed (Stone: [1972] 3 O.R. 801 (H.C.)) though PAC Council believes suspension power was upheld--November 1976--ICAO informs PAC of final decision made March, 1975 [sic] expelling accused from ICAO--(appeal from ICAO had effectively been dismissed)--as ICAO action based on facts before PAC earlier, (with minor exceptions) no further action (May, 1976)	
15	Newspaper report noticed by PAC	October 26, 1976	C.A. - sole practitioner (became C.A. 1966 - received MBA, 1970- had been company comptroller 1971-73)	Accused had been convicted of income tax evasion and of making false and deceptive statements contrary to Income Tax Act (S. 18(1)(a))	Conviction notice sent by PAC to ICAO-PAC notified accused of intention to work [Nov. 1976]--no response to notice, licence revoked February 1, 1977 PAC notified February 18, 1977 that ICAO had expelled accused as of December 17, 1976--February 23, 1977 PAC notified ICAO of PAC licence revocation	licence revoked

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
16(a)	Letter from administrator of estate	January 21, 1976	Public accountant under 1950 grandfather clause, sole practitioner	Material requested over 1 year earlier had not been supplied by accused (delay)	PAC wrote to accused asking for written explanation	No further action (and no response from accused)
(b)	Newspaper clipping sent in by Council member	November 9, 1976		Accused had been prosecuted 10 times for failure to file tax returns, 1965-1973 inclusive and 13 departmental demands to file ignored-accused convicted and to pay \$7500 fine as well as evaded tax (S. 18(1)(a))	Notice of intent to revoke sent by Council November 22, 1976-delayed pending appeal of criminal conviction-appeal delayed as trial judge delayed handing down written reasons-when PAC proposed to go on despite no appeal in April, 1977, prohibition sought that remedy denied June, 1977-hearing scheduled September, 1977	Licence revoked.
17	Client (on advice of new firm that had taken over client's account)	January 23, 1976	C.A. - partner	"unsophisticated letter" to "perhaps complain" about accused who did not do requested work (S. 18(1)(d))	Registrar wrote accused for explanation for E.C. explanation indicated accused did not know of new firm-further investigation by Registrar with complainant revealed no licensee with new firm March, 1977 Registrar requested evidence from complainant for possible prosecution of new firm-answer of accused otherwise satisfactory-complainant did not want to pay price of licensed accountants	Letter to accused satisfactorily answered - no further action

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
18 (a)		1969	Former C.A. - sole proprietor	Accused had been expelled from ICAO in 1968 for failure to maintain standards-but remained licensed because hadn't violated [now] S.18(1)(d) (disgraceful conduct) after PAC hearing (a) Accused hadn't performed as was hired to and refused to return records (S.18(1)(d)).	Registrar contacted then wrote accused-no response-accused threatened by PAC - responded January 1971 but complainant still did not get records-complainant advised to get lawyer-E.C. decided not to recommend Council inquiry but merely keep matter on file	Letters to accused-unsatisfactory answers, but no further action. Complainant advised to take civil action.
(b)	Client formerly in now in	November 15, 1976		Accused would not explain why complainant received no tax rebate, and would not return complainant's books (accused had done complainant's tax form) (S. 18(1)(d)) - now accused has failed to answer PAC letters	January 1977-accused written asking for response to complaint for E.C.-written again February, 1977-have been no E.C. meetings since then (to August, 1977)	Pending before E.C. for April 4, 1978 meeting.
19	Client	July 6, 1976	C.A. - sole proprietor	Overcharging by accused and income tax deduction suggested by accused had been rejected by tax officials (S.18(1)(d))	Registrar wrote for response-prompt answer explaining matter and including correspondence between accused and ICAO over same affair. Jan. 21 1977, complainant advised PAC does not adjudicate on accountants' bills-a matter for courts (and here, complainant had allowed a small claims court action to go by default). February, 1977 complaint restated by another party on behalf of complainant-E.C. felt accused had charged to revise forms as requested by complainant (never called parties in-unnecessary)	Letter from PAC satisfactorily answered by accused-no further action (Complainant advised)

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
20	Corporate client in	January 30, 1976	C.G.A. - sole proprietor	<p>Accused was keeping poor records, withholding ex-orbitant bills (S.18(1)(d))</p> <p>[NOTE: P.O.C. has learned from other sources, complainant was accused's brother-in-law - unclear if P.A.C. ever knew this. See Case #1 on Table XIV.]</p>	<p>Registrar wrote requesting explanation-promptly given-placed before E.C.-no fault found with accused-complainant advised and told to take civil action and that if courts found fees exorbitant, PAC should be advised as it might then be prepared to act - also told no moral turpitude visible in accused and Council does not referee fees disputes</p>	<p>Letter from PAC satisfactory answered by accused-no further action (complainant advised)</p>

TABLE XIII
INCIDENCE AND DISPOSITION OF COMPLAINTS TO P.A.C.

Year	NON-LICENSEES					LICENSEES				
	Complaints	Charged	Acquitted	Penalized	Pending	Complaints	Charged	Acquitted	Reprimanded	Licence Revoked
May 1, April 30 1964 - 1965	46	3	-	1	2	25	1	-	-	1
1965 - 1966	32	2	-	2	-	9	2	1	-	1
1966 - 1967	38	1	-	1	-	18	1	-	1	-
1967 - 1968	20	4	-	4	-	16	3	-	-	3
1968 - 1969	15	1	-	1	-	11	6	2	1	3
1969 - 1970	18	N/A	N/A	N/A	N/A	12	4	1	-	3
1970 - 1971	32	2	-	1	1	10	7	-	2	1
1971 - 1972	20	4	-	4	-	8	4	-	-	3
1972 - 1973	33	1	-	1	-	7	5	-	-	2
1973 - 1974	26	3	1	2	-	13	3	2	-	1
1974 - 1975	34	2*	-	-	1	5	2	-	1	-
1975 - 1976	38	-	-	1***	4	10	3**	-	1	1

* Summons not served in one case
** Licence surrendered in one case
*** From previous year

TABLE XIV
CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO DISCIPLINE PROCEDURE, (January, 1976-May, 1977)

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
1	Written complaint from client	January 30, 1976	Sole practitioner licensed and in public practice	Complaint alleged incompetence, errors and inaccuracies in accused's work and exorbitant fees--no prior complaints against accused--CGAA discovered that complainant is accused's brother-in-law and matter involved a family dispute not unprofessional conduct or performance [Note: this is case 20 of The Public Accountants Council discipline cases (Table #XII)]	Matter decided to be a family dispute	Not guilty
2	Written complaint of CGA official	July 6, 1976	Non-licensed sole practitioner consultant	Breach of trust by Federal Government employee--CGAA seeking conflicting commissions from area firms and school boards--Criminal Code conviction (no prior complaints against accused)	Formal hearing before Ethics Committee after Provincial Court conviction - guilty - expelled from CGAA November 19, 1977 by formal Board resolution	Expulsion
3	Written complaint from client	July 8, 1976	Licensed sole practitioner in public practice	Delay in return of records and completion of work (no prior complaints against accused)	Accused contacted for explanation by mail and telephone--E.C. meeting September 7, 1976--found guilty	Informal reprimand and warning by Ethics Committee (October 6, 1976)
4	Written complaint by another member	October 21, 1976	Non-licensed sole practitioner in public practice	"Fraud, forging cheques, and impaired driving while suffering from acute alcoholism" (no prior complaints against accused)--convicted in Provincial Court, October 19, 1976	Formal hearing before Ethics Committee January 5, 1977 - found guilty	Suspended for indefinite period by resolution of Board of Governors March 12, 1977

Case No.	Source of Complaint	Date of Complaint	Accused	Nature of Complaint	Action Taken	Ultimate Disposition
5	Oral complaint by CGA official	November 20, 1976	Non-licensed member in industry	Defrauding employer of \$3400 falsifying records-conversion Criminal Code conviction, March 28, 1977 (Article 15 (1)(e), By-laws, and ss. 203, 401, 403 and 404 Code and Rules) (no prior complaints against accused)	E.C. meeting May 26, 1977, recommends expulsion-accepted by board of Governors, June 17, 1977	Expulsion
6	Written complaint by CGA	February 10, 1977	Licensed sole practitioner in public practice	Dispute over proper professional courtesy and conduct where client transferred from one member to other (no prior complaints)	E.C. formal hearing-guilty	Written reprimand
7	Written complaint by client	February 15, 1977	Licensed sole practitioner in public practice	Fees dispute over bill for accounting for partnership dissolution and establishment of sole proprietorship (1 prior complaint against accused) [NOTE: accused seems to be same person as accused in case #6]	E.C. - Mediation hearing agreed upon by both parties	Reduced fee recommended by the committee - acquiesced in by both parties
8	Written complaint by client	May 11, 1977	Licensed sole practitioner in public practice	Late completion of a personal tax return	E.C. investigation by letter and telephone inquiry found accused guilty	Informal warning-complaint settled to client's satisfaction when accused agreed to pay any late filing penalty assessed (in the end, no penalty was in fact incurred.)

TABLE XV

SOCIETY OF MANAGEMENT ACCOUNTANTS OF ONTARIO

Complaints Before Professional Conduct Committee
(since September, 1973)*

(a) Complaints Against Registered Members (n=3):

1.	member used designation in soliciting business from other members	Accused contacted by P.C.C.-agreed to stop such activities	On accused's undertaking to desist, no further action
2	Member accepted position as a company comptroller - left employ one week later	Member's explanations logical "but P.C.C. reprimanded him on basis of not being very professional"	Informal reprimand (no complaints since)
3	Member is also a C.A. in public practice-convicted of not remitting payroll deductions [NOTE: This is Case #11 of the Public Accountants Council discipline cases.]	Awaiting word of ICAO - PAC action - file not closed	Pending

(b) Complaints against non-members (n=2):

1.	Claiming an R.I.A. designation	No proof ever submitted	File closed - no action
2	Claiming R.I.A. designation on curriculum vitae after suspension for non-payment of fees (reported by R.I.A. where accused had applied for employment)	No further complaint received and accused did not apply for reinstatement	No action

(c) Complaints against students (n=8):

	<u>n</u>	
Cheating on examinations	4	(all pending)
Attempting to procure registration by fraud (submitting false marks; claiming more credits than he had)	2	(student dropped out of program or deleted for non-payment of fees)
Using designation "R.I.A." on business cards	1	(Error was that of employer-charges dropped - student since cancelled out of program)
Conviction of criminal offence (break and enter)	1	(Would have to satisfy Council of fulfillment of professional ethical responsibilities before being registered - deleted for non-payment of fees in interim)

* Source: Notes prepared for meeting with Professional Organizations Committee by Society of Management Accountants of Ontario, August, 1977. The Society notes that "Some phone calls have been received by the Executive Director but were not followed up by complaints in writing. These have involved non-members almost entirely. No recollection of any incompetence of members alleged."

TABLE XVI CHART A MATTERS HANDLED BY PRACTICE AND ETHICS COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF ONTARIO IN TWO YEARS PRECEDING AUGUST, 1977

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
1	Newspaper - APEO and engineer's letter July 6, 1974		Negligence in design of building		Investigated APEO	Referred to OAA - architect responsible for design
2.	Engineer April 18, 1974		Negligence (house foundation collapse)	Employee of testing firm 1959 Graduate	Considered Practice and Ethics Committee	Not guilty
3.	Engineer June, 1975		Conflicts of Interest and violation of Regulations 8(b) and 3(c)	Medium firm	Considered Practice and Ethics Committee	Not serious - no further action - resolved by City
4	Engineer April, 1975		Improper conduct in claiming consulting engineer designation where only had applied for one	Small firm	Considered Practice and Ethics Committee	Not guilty
5	Lawyer for development company June 25, 1975		Unethical business conduct (business squabble between complainant and engineering firm)	Small consulting firm	Complainant invited to register formal complaint with Registration Board and proceed	Complainant waived complaint
6.	Medium engineering firm July, 1975		Improper advertising (letter to architect to get business)	Sole practitioner	Investigation by Director of Legal and Professional Affairs	Informal reprimand by Director LPA explaining what rules are.
7.	Large firm of engineers August, 1975		Complaint about the procedures of APEO in not publishing names of a particular person disciplined-wants publication.			Noted

* hereinafter Director LPA

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
8.	Two engineers with large firms September, 1975		Holding out as consulting engineers when not so designated	Sole practitioner	Bad business practice found but nothing ethically wrong	No action
9	Engineer with small firm		Complainant suggested testing soundness of roof joists in arenas after collapses in other provinces.		Informal talks with government departments decided to be satisfactory	No further action
10	Engineer in February, 1975		After split of partnership, one had taken clients unfairly	Small engineering firm	Practice and Ethics Committee investigated and "got a satisfactory response"	Notified complainant there is no complaint.
11	Senior engineer with large firm (got involved to redesign and correct errors of accused) November, 1975		Material sold for sewer led to unsafe condition and advising in area beyond expertise - incompetence, gross negligence improper conduct - poor checking of drawings	Engineer in sales business (graduated 1955)	Council hearing recommended and held	Found guilty of gross negligence and improper conduct but not incompetence - violated Code, secs. 1(b), (c), 2(a), (b), (e), (g) - suspended two years and publication of discipline action with names (under appeal)
12.	Solo consulting engineer November, 1975		Business squabble when costs of subdivision being designed by accused rose and he fired and replaced with complainant	Consulting engineer	Tried to "calm the parties down"	"less than informal reprimand"

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
13	member employed in Government Department		Insult of complainant in letter written to mayor calling complainant "silly and arrogant bureaucrat"	Engineer	Held that the letter was not damaging	No action
14	Consulting engineer in March, 1976		Facts that led to a criminal fraud charge	engineer	Held pending criminal result - matter dropped	No action
15	Architect in October, 1975		Architect found fault with structural engineering done by accused firm (on school addition)	Small firm	Interviews of accused and complainant and independent structural reports obtained - no major design faults found - problems occurred during the work and contract vague	Complainant advised he had failed to provide sufficient evidence.
16	Government Agency December 12, 1975		Reports on mining property done by engineer alleged poor	Small firm	Case turned to mining committee - no basis for complaint found	Govt. agency advised that if it did not like the report, should have asked it be redone
17	Engineer member of a ministry 1973		Police charge against accused - subsequently convicted of breach of trust (Crim. Code Ss. 110, 111)	Civil servant engineer	formal hearing (in absentia) after criminal conviction	Violation 9(c) Regulations and 1(a), (b), (c), 2(a), 6(a), of Code - Membership cancelled and decision published with names in APEO official publication

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
18	Newspaper article sent in by engineer February 11, 1976		Article dealt with Inquiry - senior officers of (construction co.), are members of APEO - unethical conduct(?)	Engineers	No action taken or expected	no action
19	Municipal council member in and NDP MPP for the area February, 1976		Political patronage alleged where costliest and least experienced got the job	Small consulting firm in (same party as case 5)	Member interviewed and no evidence of unprofessional conduct found	No action
20	Engineer in Government Department February 11, 1976		Lack of quality control in building a small structure built for government department (insufficient control at manufacturing level)	Manufacturing company and its chief engineer (young member)	No formal action	Accused counselled and complainant advised
21	Government Official		Permitting stamp to be affixed when drawings were not his and he had left project	Engineer for	Letter of advice written by Director LPA as informal reprimand	Detailed explanation of handling of plans given and accused advised matter would be treated seriously if re-arose
22	Homeowners association March, 1976		Poor workmanship on a residential subdivision permitted by the borough	Engineer building commissioner in a borough (practising since 1946 or 1948)	Accused advised of complaint and responded (complainant had sued the contractor for \$12,000 recovered \$3,000)	No further action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
23	Small engineering firm		Case is reverse of case 4 - complainant there is accused here - argument over who had responsibility for work when parties working together as employer-employee	Small consulting firm	Practice and Ethics Committee decided it not proper body to deal with cease and desist claims where insufficient information	Legal assistance offered if charges laid (apparently no further action)
24	News item supplied to press by Port Director		Engineers admitted to accepting bribes but not yet convicted	Two engineers	Practice and Ethics Committee watching over this pending criminal proceedings	Pending. Possibility of another engineer and Corporation being involved.
25	Engineer with large firm April, 1976		Advertising rules breach - permitting name on mugs, calendar, etc.	Large firm	Not serious enough to require attention	No action
26	Government Official		Accused wrote opinion contradicting that previously given by expert consulting firm - given to contractor friend after Ministry had issued stop-work order and consulting firm advised on remedial work	engineer (graduated 1972)	No formal charge but accused brought before Practice and Ethics Committee	Strong letter of admonition written
27	Farmer, March, 1976		Engineer proposed passage of a by-law (as a landowner) - his actions "almost incited a riot"	Member in	No jurisdiction as conduct not related to his profession	No action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
28	Newspaper (probably) April, 1976		Same accused as case 2 during investigation of case 2, discovered accused accepted benefits while with OHC (after original company failed)	engineer (graduated 1959)	Charged and convicted of Professional Misconduct (charge laid by Director LPA-violations of ss. 1(a), (b), (c), 2(a), 3(c) and 6(a) of Code - possibly 9(c) as well	One year suspension and accused required to set APEO exam in Professional Practice-disciplinary action published in summary in newspaper
29	Newspaper 1971		Criminal Code S. 111 conviction (breach of trust)	County engineer	Formal discipline hearing	2 year suspension (following short incarceration) and publication in newspaper
30	Newspaper and engineer report		Design fault suspected - investigation revealed lack of quality control during construction and many engineers involved prime consulting - subcontractors	Several engineers (acting in differing capacities)	Practice and Ethics Committee sent task force to investigate structural aspects hard to show fault with this type of construction where so many involved - but clearly someone made a substantial error	Letter written to Design Engineers requesting more care to be taken in future projects. Not enough evidence for further action.
31	member of APEO and of Practice and Ethics Committee June, 1976		Certificates given by accused in circumstances where he could not possibly give them properly (walls already closed) so clear accused had not done what necessary to check validity of certificates	Member of small firm		Letter of admonition to accused - accused ordered to report (to financier) inconsistencies in his report

Case No	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
32	Consulting engineer		Alleged that employee of consulting firm had - improperly stamped drawings prepared by an un-licensed firm.	consulting firm	Offence not proved - generally difficult to prove as "there is always the suspicion one competitor comp-lains about another"	No action
33	Newspaper and Government Department (separately)		Collapse of a section of a building (designer not an engineer but had hired engineers)		Talked to designer and engineer - employee - no formal charge as concluded cause was not design error but contrac-tor's mistake	No action
34	Newspaper report of Coroner's inquest May, 1976		Culvert collapse (2 persons killed) (no criminal charges laid, but a civil claim is pending) - accused claims he never went on site - basis <u>appears</u> to be poor supervision	engineer (graduated 1956)	Practice and Ethics Committee recommended formal charges of pro-fessional miscon-duct to Council - accepted by Council	Disciplinary hearing scheduled for 1978. (report noted in paper September 1976 - Collapse was May, 1976)
35	Newspaper May 12, 1973		Criminal Code conviction for defrauding a con-struction company (accu-sed claims all done by his co-accused)	Engineer working for contractor	Matter went to Council	Reprimand and this discipline to be published subject to result of appeal of the criminal conviction
36	Engineer October, 1976		Repairs to an arena im-properly effected in 1960 (1976 complaint after government department checked arenas in 1976)	consulting firm	Practice and Ethics Committee examined - accused admitted error - these engineers have good relations with the community	No action recommended

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
37	Engineer		Complainant was asked to resign from by accused	Engineer	No grounds found by Practice and Ethics Committee	No action
38	Newspaper clipping (1) Sent in (2) later, complaint by consulting engineer in large firm		(1) Improper advertising in saying arcadas are often torn down by consulting engineers when they can be repaired more cheaply (so engineers get higher fees, (2) A building done by accused is structurally inadequate	Structural engineers (medium sized firm)	(1) Originally letter admonishing accused recommending (2) Letter never written when second complaint came in - Chairman of Practice and Ethics Committee met with complainant in (2) and accused	Practice and Ethics Committee recommended to Council that charges of professional misconduct be laid against engineer.
39	Engineer May, 1976		Unethical practice - not charging a municipality for some work done (accused says not a very technical report for constant clients)	Medium sized firm	Practice and Ethics Committee suggested to Legislation Committee that Code should prohibit the giving of free advice to constant clients.	No action
40	RCMP informed CCPE which notified APEO October, 1976		Tax fraud charge - Criminal Code s. 358(1) convicted	Engineer graduated 1954	Though accused was a member at time of offence, he had since ceased to be all APEO can do is cancel membership so no action possible	Record kept on file in case accused ever re-applied

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
41	Government official		Excessive fee (and according to very excessive), and though report not incompetent, appeared not to meet requirements of Drainage Act (accused had no experience working under that statute)	engineer	consulting engineer checked accused's report--non conformity with relevant Act found--accused interviewed by Practice and Ethics Committee - recommendation to Council (in Feb. or March, 1977) of professional misconduct charge based "mostly on inadequate work"	Pending before Council. Further evidence being obtained prior to a hearing date being fixed.
42	Allied professional body October, 1976		Accuseds had been found liable for \$25,000 in action for infringement of copyright	Two engineers	Practice and Ethics Committee feels may have been professional misconduct - sent to Council.	At Council discipline hearing both accused found not guilty. Decision handed down 2nd March, 1978.
43	Consulting engineer in small firm December 15, 1976		Incompetence charged by complainant, who took over the project from accused - also charged with supplying improper inspection certificates (accused had registered liens which brought project to a halt before being replaced by complainant)	Consulting engineer in small firm	Practice and Ethics Committee recommended charge of professional misconduct - but complainant himself has been charged and acquitted of professional misconduct - outside firm has been hired	Pending before Council. Evidence to be collected prior to Council hearing date being fixed.

Case No.	Course and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
44	Engineer December 7, 1976		Professional misconduct alleged when gas explosion found caused 70% by the utility, in law suit - old gas main disturbed when new water main installed	Engineer manager of a public utility company (graduated 1941)	Practice and Ethics Committee investigated and spoke with accused - satisfied with his answers	No further action
45	Newspaper - then government department January 3, 1977		Roof collapse (second in 1 year) - civil actions pending charging improper welding and poor quality control (possibly design errors as well)-accused says he informed superiors at his company re employee laxness but was overruled	Chief engineer with steel fabricator	Practice and Ethics Committee investigated-fee accused may have placed own interests over public interest-investigation ongoing to produce more evidence required if matter to go on	Watching brief continuing.
46	Consulting engineer in medium size firm		Charge that employee, moon-lighting, stamped drawings that were those of a design service, and not his own.	Engineer employed by large firm	No basis for enforcement against design drafting service-Director LPA plans to speak informally with accused	No action
47	Small consulting firm February, 1977		Engineers 'stamped drawings done by others.	Small firm	Investigation indicated engineers did the design and were to supervise	No action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
48	Retired professional on farm near November, 1976		Disregard of safety rules and failure to follow up an unsafe matter	Two municipal officials	Investigation by executive indicated not enough evidence to pass matter to Practice and Ethics Committee	Complainant advised no basis for complaint-he wrote disapproving the determination-APEO wrote telling him he can press own formal charges before Council if wants to-no further action
49	Member of general public based on information from an unidentified engineer March 2, 1977		Small firm hired by government dept. reported \$22,000 necessary to repair arena-Ministry thought improper and told small to consult-did with larger firm and \$72,000 required to repair arena-small firm inexperienced in arena repairs and admitted it should have taken precautions	Small and medium firm	Practice and Ethics Committee recommended letter of advice and admonition to small firm (no basis for complaint against larger one)	Letter of advice and admonition from Practice and Ethics Committee
50	Engineer in small firm April, 1977		Accused sat on an Drainage Tribunal panel - noted that engineering costs for complainant's professional services were unusually high (impugning complainant's professional integrity) - Tribunal member therefore complained against.	Engineer in small firm	No jurisdiction since accused made comments while acting on public board-complainant told he could press charge to Council personally, or sue	No action
51	Person operating design drafting service in March 8, 1977		Letter written complaining about how a Ministry's work being allocated, allegedly signed by accused in complainant's name without authorization	Small consulting firm	No action recommended though complainant advised he could write Ministry apologizing for accused engineer's actions - engineer informed of this advice	No further action.

Case No	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
52	Engineer - officer of APEO June, 1977		Conflicting reports engineer advised Township arena safe, on visual inspection - government dept. wanted more detailed analysis - close inspection by different engineer reveals arena unsafe and \$5,000 work needed	Engineer in	Practice and Ethics Committee now investigating cause of conflicting reports	Practice and Ethics Committee recommends to Council professional misconduct charge.. Pending before Council.
53	OAA June 7, 1977		Engineer stamped drawings for a drafting service - stamp appears on architectural drawings	Engineer	Director LPA-investigating personally then may turn over to Practice and Ethics Committee	File closed. Lack of further evidence.
54	Engineer in small firm June, 1977		Accused made statements indicating complainants reports were wrong - complainant wanted accused to assure newspaper that quoted the statement would publish a retraction	Engineer	Practice and Ethics Committee told Director LPA to contact accused to see if he'd procure the retraction if the accusations were false.	No retraction, no further action. File closed.
55	Newspaper 1970		Stamp of engineer was on drawings prepared by non-engineer (K)	Engineer G	Two letters not replied to by G in investigation continuing into allegation G sold stamp - enforcement case pending against K	No further evidence, file closed.

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
56	Further to cases 2 and 28		Crim. Code s. 111 charges-accused pleaded guilty and fined but given conditional discharge-question of if APEO can treat this as a conviction (legal advice says yes)	Engineer, boss of accused in 28	Practice and Ethics Committee investigated and recommended professional misconduct charge to Council	Professional misconduct charge pending before Council. Date set for hearing, 1978.
57	Letters from a non-member and an engineer March, 1977		R permitted partnership of which he a member with M (unlicensed) to practice without a certificate - M found with forged stamp - other ethical problems	Young engineer(R)	Originally R appeared before Practice and Ethics Committee and ordered to write exam on ethics and to be admonished by letter-later evidence indicates R's complicity may be greater-investigation continues into possible professional misconduct	Practice and Ethics Committee recommended to Council that a disciplinary hearing be heard and charge of professional misconduct. Found guilty at disciplinary hearing of professional misconduct. Accused given one month suspended sentence which was deferred for three months to allow accused to satisfactorily pass a professional conduct exam. If successful suspension would be cancelled.
58	Government Department November 16, 1976		Floor in small condominium collapsed during construction-incorrectly designed and erected beam (accused was contractor and engineer)	Small contracting company (contractor is an engineer)	Accused appeared before Practice and Ethics Committee as he "should have known better" letter of advice and admonition suggested	Letter of advice and admonition sent
59	Government Department November 16, 1976		Shoring for sewage pumping station collapsed - piling contractor had engineer employee, but consultant finalized and stamped drawings	2 engineers (employee of contractor, member of medium consulting firm)	Interviews with all involved by Practice and Ethics Committee-no professional misconduct found	No further action

TABLE XVI - CHART B
ASSOCIATION OF PROFESSIONAL ENGINEERS OF ONTARIO MISCELLANEOUS CASES - DID NOT GO TO PRACTICE AND ETHICS COMMITTEE
(Two years preceding August, 1977)

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
60	Architect July 20, 1976		Unauthorized practice	Contracting firm	While investigation pending contractor obtained a certificate	No action
61	Developer April, 1977		Road failure-suggests incompetence and overcharging by engineer who did design	Consulting engineer	Schedule of fees sent- no evidence given by complainant of terms of contract or nature of incompetence-never heard from complainant again	Pending at initial screening
62	Businessman in November, 1976		Former member was using his status to dupe investors	Former engineer	further information hard to get-as accused no longer a member, matter noted in case he ever reapplied	No further action
63	Engineer with small contracting company April, 1977		Engineer defrauded the company complainant	Small firm	Engineers accused said they would co-operate after its lawyers finished with complainant	Pending at initial screening
64	Engineer		Complainant's structural work re-designed by accused	Engineer	No breach of Code since accused working for different person from complainant	No action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
65	Homeowner 1975		Houses settled when large sewer tunnel built-contractor and municipality are being sued (many engineers involved in the construction, apparently)	Engineers involved in the construction	APEO is following the legal action and has a consulting engineer -as yet unclear whose fault	Pending at initial screening
66	Developer September, 1976		Consulting engineer went to municipality directly for a job where land being assembled by complainant	medium size consulting firm	nothing to act upon	No action
67	Medium size consulting firm July 7, 1976		Complainant fired by developer and accused hired-breach of Code alleged	medium size consulting firm	owner advised APEO of actual contractual arrangement-no case felt to exist	No action
68	engineer (formerly) 1974		Complainant lost his job-accused was his superior and accusations made against accused	city engineer	Insufficient information provided by complainant-no case had appeared-file closed (APEO tried to get a new job for complainant)	No action
69	Employee of Government Department March, 1976		Accused was fired and charged with theft and fraud-criminal charges pending	Engineer employee of Government Department	APEO awaiting outcome of criminal trial	Pending at initial screening
70	March, 1976		Engineering stamp on drawings prepared by construction design firm		No evidence of misuse of stamp	No action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
71	Engineer in large firm June, 1976	.	Small firm "stole" project from large (complainant)	Small consulting engineering firm	Complainant advised if proof furnished, matter will go to Practice and Ethics Committee-to date no evidence supplied	Pending at initial screening
72	Woman employee of consulting firm November, 1975		"Phone calls" received by complainant after advertisement by her firm for engineer technician	Engineer (?)	No proof provided	No action
73	Newspaper and engineer 1976		Accused came to and thought he was there seeking work-in fact billed them for a proposal	Engineer in electronics business in	Not followed up - regarded as "just bad business practice"	No action
74	Phone complaint June, 1976		Engineers violated Code condemning failure to use safety equipment to keep equipment operative-part of ongoing civil suit matter	Engineers	Director LPA was promised information by complainants but despite a follow-up letter, received nothing	Pending at initial screening
75	Engineers formerly employed by accused firm		Alleged that accused firm was blacking reputation of complainants	Engineering firm (former employer of complainants)	Held to be simply a business squabble	No action
76	Engineering firm March, 1976		Employee charged construction shoes to complainant after termination of his employment by complainant	Former employee	Copy of Code sent to complainants and told if they can provide evidence of contravention, to provide it	No further action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
77	Architect and consulting engineers February, 1976		Engineer was getting involved in the complete design of a building	Engineer	After investigation and interviews, Director LPA was satisfied and matter did not go to Practice and Ethics Committee	No further action
78	1975		Complainant had initiated suit against accused	engineer	No details of suit given then or since	Pending at initial screening
79	Engineer employee of accused December, 1975		Employer gave accused unsatisfactory report in performance review		Director LPA asked for documented evidence of a breach-heard no more	No action
80	Development company September, 1975		Accused sued complainant for fees-complainant counterclaimed for gross negligence	Consulting engineer	Director LPA feels it just a squabble and letter to him was merely a "lever"	No action

TABLE XVI - CHART C
MATTERS BEFORE PRACTICE AND ETHICS COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF ONTARIO, JULY 1977 - MARCH, 1978
Ultimate Disposition

Case No.	Source & Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
81.	Engineer July, 1977		Breach of Code of Ethics. Engineer carrying out work that he was not qualified to do.	Engineering Firm	Considered at Practice & Ethics Committee. Correspondence to complainant requesting further information.	No further information forwarded. Case closed.
82.	Society of Professional Engineers and Associates, June, 1977		Complaint against Registrar of APEO after his attendance at an arbitration case.	Registrar, APEO	President of APEO wrote in response to complaint.	No further complaints. File closed.
83.	July & August, 1977 Engineer & former partner, known engineer.		Complaints against engineer and his former partner by each other as a result of company break-up.	Engineer and non-engineer	Non-engineer informed assistance will be given if he filed formal complaint.	No further evidence requiring action by APEO was received. File closed.
84.	Former client of engineer		Complaint that engineer had not stamped his drawings, which were not accepted by Building officials and required further amendment.	Engineer	Accused appeared before Practice and Ethics Committee.	Letter of admonition to engineer.
85.	Newspaper		Engineer convicted of conspiracy to illegally use funds entrusted to him contrary to Condominium Act.	Engineer	Following criminal conviction, Practice & Ethics Committee recommended professional misconduct charge.	Refer to discipline list Case No. 14.
86.	Engineer		Complaint against APEO staff member by engineer and accusations of non-cooperation and bias. APEO staff member wishes to bring proceedings against complainee engineer for breach of Code of Ethics.	Staff member/engineer/complainant engineer.	At the advice of legal counsel, staff member dropped complaint.	Case closed.

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
87.	Sept. '77		Complaints and counter-complaints by engineers against each other claiming breaches of the Code of Ethics.	Engineers	Practice & Ethics Committee recommended to Council for disposal.	Council disciplinary hearing to be held 1978.
88.	Engineer, October, 1977		Engineer made false statements on APEO application documents, contrary to Section 27(2)(b) of Professional Engineers Act.	Engineer	Considered by Practice and Ethics Committee recommendation that prosecution be made under Professional Engineers Act.	File closed on advice from legal counsel indicating a potentially successful defence.
89.	Engineer October, 1977		Complaint against fellow engineer for not acting fairly and correctly whilst giving evidence in a civil litigation matter.	Engineer	Considered by Practice and Ethics Committee.	Practice & Ethics Committee requested further information from complainant but indicated that action could be taken by him against the accused under Section 25 of the Act.
90.	Building Director October, 1977		That engineer breached professional trust in taking advantage of his position in government dept. to successfully bid on a Borough work project on behalf of his wife's Company.	Engineer	Considered by the Practice and Ethics Committee.	Council hearing recommended and charge be one of professional misconduct.
91.	Architect December, 1977		Infringement of architect's copyright on drawings.	Engineer	Practice and Ethics Committee reviewed matter.	No action and architect informed of decision that matter was more of a civil dispute.
92.	Engineer December, 1977		Misleading and questionable advertising. Accuse	Engineer	Practice and Ethics Committee to interview offending engineer.	Pending.

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
93.	Newspaper and engineer.		Settlement of Apt. Bldg. causing evacuation of tenants. Acc	Possibly several engineers	Practice & Ethics Committee in the stages of interviewing various witnesses.	Pending.
94.	Building Official		Incompetent work on design and structural projects. A house and restaurant.	Engineer	Practice & Ethics Committee reviewed case and recommended Council for disciplinary hearing.	Disciplinary hearing pending.
95.	Newspaper		Memorial Arena roof collapsed.	Possibly engineer	Practice & Ethics Committee have reviewed this matter and are keeping a watching brief. Are also in contact with government department.	Pending.
96.	Developer		Professional misconduct by engineer in withholding certain facts from developer and demanding further fees.	Engineer	Practice & Ethics Committee reviewed this matter and wrote requesting that engineer responsible submit a written report on the allegations.	Pending.
97.	Building Official January, 1978		Plans stamped by engineer indicated brick interior wall however, Building Inspector found wall was wood. Misrepresentation.	Engineer	Presently under inquiry prior to being forwarded to Practice & Ethics Committee.	Pending.
98.	Newspaper		Engineer pleaded guilty to arson in attempting to burn his residence for insurance proceeds.	Engineer	Practice and Ethics Committee reviewed this matter and recommended to Council for disciplinary hearing.	Pending.

Miscellaneous Cases Not Presented to Practice and Ethics Committee. (August 1977-March 1978) updating Table XVI Chart B

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
99.	Allied Professional Body		Engineering Company stamping Architectural drawings.	Engineering firm	Engineers accused indicated that architects knew that he was sealing architectural drawings.	No evidence of professional misconduct. No further action.
100.	Developer August, 1977		Complaints from original consulting engineers to developer for further use of plans after original consulting engineers had been discharged from job site.	Consulting Engineers	Correspondence to developer indicating that there was not enough evidence to proceed and also that the matter was a business argument.	No further action.
101.	Journal 31 August 1977		Farmer holding back taxes complaining that work on drain cross land was badly designed and constructed.	Possibly engineers.	No formal complaints have come forward to date.	Pending.
102.	Developer 9 December 1977		Complaints of incompetence against engineer by developer on drainage of a real estate lot.	Engineer	APEO awaiting experts' report from developer before proceeding.	Pending
103.	Member of Public October, 1977		Complaint that engineer's company complained regarding the disappearance of some \$35,000 given to company for design and construction of concrete dock.	Engineer	Request further details from complainant in writing.	Pending
104.	Widow of former scientist February, 1978		Complaint by widow that supervisor of deceased husband was biased, prejudiced, which conduct may have caused husband's death.	Engineer	No action taken as letter was addressed to APEO. with copy to APEO.	Pending.

TABLE XVII
CHART A

A.P.E.O. Disciplinary Hearings
January, 1970 - July, 1976*

Number of Hearings	14
Number of Dismissals	3
Number of Convictions	10
Number of Decisions Pending	1

Types of Convictions - (Note: More than one conviction may be registered)

Breach of Code of Ethics	5
Incompetence	3
Gross Negligence	3
Infamous, Disgraceful or Improper Conduct in a Professional Respect (i.e. Unprofessional Conduct)	2
Conviction of Serious Criminal Offence	1
Obtaining Registration by Misrepresentation	1

Penalty - (More than one penalty may be imposed)

Official Reprimand	6
Cancellation of Membership and Removal of Name from Registrar	3
Suspension	1
Suspension to be lifted upon writing of examina- tions testing competence	1

Source: Association of Professional Engineers of Ontario

TABLE XVII
CHART B

APEO FORMAL DISCIPLINARY HEARINGS RELATED TO COMPETENCE

January 1970 - July 1976

Case No.	Date	Nature of Offence	Disposition	Notes
1	May 7, 1970	Gross negligence and incompetence in carrying out engineering duties on project	Cancellation of membership.	Re-admitted into APEO May 27, 1971 after re-applying April 23, 1971
2	December 8, 1970	Gross negligence and incompetence demonstrated by accused who was an expert witness in a civil trial against complainant.	Charge not established.	
3	May 24, 1972	Gross negligence and incompetence demonstrated when a building collapsed while being supervised by accused (failure to assure wall ties used were adequate and properly installed)	Charge not established though some concerns were expressed in decision.	
4	February 23, 1973	Incompetence reported by Securities Commission - accused charged not to have knowledge or experience necessary to make proper feasibility study of a place mining operation - made poor, unsubstantiated and overly-generous report.	Guilty of incompetence - failed to exercise ordinary skills of a professional engineer in writing the report - official reprimand.	
5	September 20, 1973	Gross negligence and incompetence - accused submitted drawings in support of a building permit application that did not comply with relevant code, showed overstressing, etc. also charge of failure to give adequate regard to public needs and safety and professional integrity.	Incompetence - and gross negligence not established - breach of fidelity to public and professional integrity official reprimand - 3 month suspension but not to be served if accused passed 2 specified examinations and oral examination before sub-Board of Board of Examiners.	Accused passed examination and satisfied sub-Board-Council therefore decided 3 month suspension should not be imposed.

Case No.	Date	Nature of Offence	Disposition	Notes
*6	January 29, 1975	Charge against 2 accused - unsatisfactory design and supervision of construction of medium apartment building - poor drawings failure to conduct adequate field inspections, failure to report design and supervision defects in initial site inspections - failure to ensure tests required by National Building Code were performed - all discovered when City and Ontario Housing Corporation reported design and supervision problems and engaged an independent engineer.	6(i) No gross negligence but charge of incompetence established - formal reprimand ordered and fact it given to be recorded 6(ii) - This accused had been injudicious in not being aware of seriousness of concerns when first brought to light and in not exercising supervisory responsibilities as head of his firm - but not guilty.	
7	March 11, 1976	Design of a cofferdam alleged inadequate and unable to bear loads - discovered when new engineer hired to review design and repairs effected - incompetence charged in checking design since accused had done no structural design work since university graduation in 1955.	Guilt of gross negligence and improper conduct but not of incompetence - 2 year suspension and reinstatement only on satisfactory proof of complete knowledge of Act, Regulations, By-laws and Code of Ethics of APEO.	Appeal is pending in this case.
8	August 13, 1976	Charged with incompetence and conviction of serious criminal offence - details scanty but relates to Code, sections 1(a), 1(b), 1(c), 2(a), 3(c) and 6(a). **	Guilty. Suspended for one year prior to termination of suspension engineer be required to pass 0.2.1 of APEO's exam. Decision to be published.	

* Source: Memo provided to P.O.C. by A.P.E.O., August 23, 1976.

** Total number of formal discipline hearings during the period January 1970 to July, 1976 related to competence and to other matters = 14
(For further breakdown see Table XVII Chart A).

TABLE XVII, CHART C
APEO Formal Disciplinary Hearing August 1970 through March 1978*

Case No.	Date	Nature of Offence	Disposition	Notes
9	January 18, 1977	Engineer charged and found guilty of taking bribes and breach of trust. Sections 110 and 111 of the Criminal Code complaint by APEO under Sections 1(a, b, c); 2(a), 6(a) of Code of Ethics.	Guilty of professional misconduct within the meaning of Section 8(b and d) of Regulations. Membership cancelled by Council and that his name be removed from the register of the APEO and that decision be published in official journal of APEO.	
10	January 23, 1977	Guilty of breach of trust and fraud. Sections 111 and 338 of Criminal Code. Charged with professional misconduct under Sections 8 and 9	Suspension of member of two years. Publication of the decision in the official journal of APEO.	Appeal is pending in this case.
11	July 21, 1977	Found guilty of fraud and breach of trust. Sections 110 and 111 of Criminal Code. Charged with professional misconduct under Section 8(b) and Section 9 of the Regulation 691.	Guilty of Professional misconduct considering sentence imposed by Civil court, engineer was reprimanded and decision published in the official journal of APEO.	
12	January 3 & 4, 1978	Alleged violation of architect's copyright on drawings by engineer. Charged with improper conduct in a professional respect contrary to Section 8(b) of Regulations 691.	Discipline Committee found not sufficient evidence. Not guilty of professional misconduct.	
13	January 3 & 4, 1978	Alleged violation of architect's copyright on drawings by engineer. Charged with improper conduct in a professional respect contrary to Section 8(b) of Regulations 691.	Discipline Committee found not sufficient evidence. Not guilty of professional misconduct.	

* Source: Information and Chart provided by A.P.E.O., March, 1978.

Case No.	Date	Nature of Offence	Disposition	Notes
14	January 8, 1978	Professional misconduct. Being improper conduct by reason of taking the title "Consulting Engineer" and permitting company for which he was director and designated engineer to take on such title and allowing the president of the company, a non-engineer, to take and use the title "Registered Professional Engineer". Violation of Code of Ethics specifically Sections 1(a, b and c); Section 2(a); Section 5(2) and 6(a and b).	Guilty of professional misconduct including violation of Code of Ethics. Reprimand to be recorded with Registrar of APEO, suspension of membership for one month but such suspension be postponed for three months to allow engineer to sit and pass APEO examination 0.2.1 and if successful the penalty of suspension to be remitted. Publication of decision without disclosing name of engineer and organizations involved.	
15	February 2, 1978	Engineer convicted of conspiracy contrary to Section 423 (2)(a) of Criminal Code; using funds placed in trust with him under the Condominium Act RSO 1970 Chapter 77. Charged by APEO with professional misconduct. Specifically Sections 1(a) and (c) and 6(a) of Code of Ethics.	Engineer guilty. Membership to be cancelled. However, considering sentence imposed by Civil court direction that cancellation be suspended for one year to allow engineer to sit and pass APEO's examination 0.2.1 and if successful, penalty of cancellation to be remitted. Decision to be published in official journal of APEO.	

TABLE XVIII

Complaints Relating to Competence by Category of Incompetence Alleged
(A.P.E.O. - Staff and Practice and Ethics Committee August 1975-March 1978)

Total complaints related to competence 33

Negligent design	18
Negligent supervision	17
Undertaking engagements beyond accused's competence	12
Disregard of the public interest, non- compliance with safety standards, gross negligence in design and supervision*	<u>11</u>
	58**

* These cases frequently appear to involve arrangements for limited service by the engineer in return for modest fees, and may often be as easily characterized as misconduct, as incompetence.

** Some complaints were classified into more than one category.

TABLE XIX

Sources of Competence Complaints Received by A.P.E.O. and Considered by Staff and Practice and Ethics Committee, August 1975 - March 1978 (n=33)

Other Engineers	12
A.P.E.O. Staff (including reading newspaper reports)	8
Clients (including 4 developers, or development companies)	6
Government agencies (Building department, Securities Commission, Ministries of Labour and Agriculture)	6
Other (architect, homeowners association, unknown source)	<u>4</u>
	36*

- * Three complaints have dual sources: two cases reported by engineers and one government department complaint were also noticed by A.P.E.O. staff on their own.

TABLE XX - CHART A

O.A.A. PROFESSIONAL CONDUCT COMMITTEE COMPLAINTS, 1975

(a) Source of Complaints

(Complainant)

Client	4
Architect	32
Other (Contractors' Association, Student Legal Society)	<u>2</u>
Total Complaints	38

(b) Disposition of Complaints

Resolved in Professional Conduct Committee	34
Formal Complaints	<u>4</u>
Total	38

Source: Ontario Association of Architects

TABLE XX - CHART B

O.A.A. PROFESSIONAL CONDUCT COMMITTEE COMPLAINTS, 1976

(a) Source of Complaints

(Complainants)

Client	3
Architect	9
Other	<u>6</u>
Total Complaints	18

(b) Disposition of Complaints

Resolved in Professional Conduct Committee	14
Pending in Professional Conduct Committee	1
Formal Complaints	<u>2*</u>
Total	17

Source: Chart D of Table XX

* This figure includes case number 42 on Chart D of Table XX. A formal complaint was recommended but was not pursued when the O.A.A. lost an appeal to the Divisional Court in a similar matter (Case 15 on Chart D Table XX).

TABLE XX - CHART C

O.A.A. PROFESSIONAL CONDUCT COMMITTEE COMPLAINTS, 1977 (Jan. - April)

(a) Source of Complaints

(Complainants)

Clients	1
Architects	7
Other	<u>-</u>
Total Complaints	8

(b) Disposition of Complaints

Resolved in Professional Conduct Committee	4
Pending in Professional Conduct Committee	3
Formal Complaints	<u>1</u>
Total	8

Source: Chart D of Table XX

TABLE XX - CHART I)

Complaints before Professional Conduct Committee - Ontario Association of Architects, November 1974 - April, 1977

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
1	Telephone November, 1974 By official		Practising in partnership without filing memorandum of practice-Regulation 35(K)	Sole practitioner	Appearance of accused before Professional Conduct Committee and technical breach found	Accused advised not to repeat the behaviour
2	Writing January, 1975 By architect		Unprofessional solicitation of business	Sole practitioner	No specific prohibitions found prohibiting accused's conduct - no technical breach - Professional Conduct Committee	Accused written and counselled not to repeat the behaviour
3	Writing February, 1975 By architect		Violation of Regulation 35 (assisting breach of Architects Act - assisting unauthorized practice)	Sole practitioner	Accused found close to violation but no technical breach - Professional Conduct Committee	Architect counselled not to continue such conduct
4	Writing January, 1975 By architect		Violation Regulation 35	Sole practitioner	Accused found guilty of a technical but minor breach by Professional Conduct Committee	Accused counselled not to repeat the behaviour
5	OAA		Multi-disciplinary group (including engineers) had been awarded architectural contract by government	Multi-disciplinary group	OAA wrote government to advise it not to give architectural work to engineers	Government rescinded agreement but accused "regrouped the architects" in the firm and was awarded the project again
6	Writing by architect November, 1974		Violation Regulation 35	Sole practitioner	Accused found guilty of technical but minor breach - Professional Conduct Committee	Accused counselled not to repeat the behaviour

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
7	Writing by architect February, 1975		Violation Regulation 51(a) - failure to notify a dismissed architect that accused had been retained to take over the job	Sole practitioner	Technical breach found by the Professional Conduct Committee	Accused counselled
8	Writing by architect January, 1975		Violation Regulation 35	Sole practitioner	Accused close to breach but no technical violation - Professional Conduct Committee	Accused counselled
9	Writing by chapter of OAA February, 1975		Firm called themselves "engineers and architects" rather than "architects and engineers"	Small firm	No technical breach found - Professional Conduct Committee	Accused counselled
10	Writing by architect March, 1975		Violation Regulation 54 - passing off work of another member as that of the architect accused (Regulation prevents one architect who splits from a group claiming credit for work not done by him)	Large firm	Technical breach found by Professional Conduct Committee	Accused counselled
	File 94		Advice of Professional Conduct Committee on a Regulation 35 matter (not a complaint)			
11	Writing by architect April, 1975		Conflict of interest "architect president of local conservancy group providing comments to school board client which another member considered detrimental to his project. Asked to prepare report also provided architectural services to school board client" [sic]	Sole practitioner	No technical breach found (Professional Conduct Committee) (no regulation of such matters at the time though now is)	Accused counselled

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
12	Writing by Chapter of OAA February, 1975		Violation Regulation 33(K) Use of a name not approved by Registration Board	Large firm	No technical breach found by Professional Conduct Committee	Accused counselled.
13	Writing by client February, 1975		Fees too high for services rendered	Sole practitioner	No breach - fee reasonable and in accordance with suggested fees (Professional Conduct Committee)	Accused told to contact client and to resolve matter amicably and to have a formal contract thereafter.
14	Writing by Chapter of OAA April, 1975		Violation Regulation 32(f) - stamping of drawings prepared by non-architects - accused was engineer and architect - building was designed by a non-professional - accused stamped with engineer's stamp	Sole practitioner	No technical breach of Architects Act found - at best, a breach of Engineers Act and no jurisdiction in OAA - OAA does not send such matters to APEO because "APEO appears to allow this practice if the engineer checks the drawing (Professional Conduct Committee)	Accused counselled.
15	Writing by architect April, 1975		Violation Regulation 35	Small firm	Blatant violation believed by Professional Conduct Committee - case sent to Registration Board for formal complaint hearing	Registration Board found guilty - imposed 1 year suspension - court appeal allowed (Divisional Court) and conviction and sentence reversed with solicitor and client costs to accused.
16	Writing by client April, 1975		Fees too high for services rendered	Small firm	No justification for the complaint (Professional Conduct Committee)	Accused advised of Professional Conduct Committee's view that no justification for complaint
17	Writing by client May, 1975		Fees too high for services rendered	Small firm	Professional Conduct Committee unwilling to find clear fault - "grey area"	Professional Conduct Committee asked accused to cut the fee "because it was bad public relations".

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
18	Writing by architect May, 1975		Violation Regulation 53 (Member injuring prospects of a member from another province retaining commission)-accused firm retained after giving "expert" advice criticizing quality of complainant's work	medium-sized firm	Proof found impossible by Professional Conduct Committee - complaint rejected - complainant complained to association later but similarly there no action against accused	Complaint rejected - no action.
19	Writing by architect May, 1975		Violation Regulation 51(g) - failure to notify member dismissed by a client that new member taking over the job	medium-sized firm	Technical breach found by Professional Conduct Committee	Accused counselled
20	Writing by general contractor association June, 1975		Accused criticized a general contractor (in the press) as being incompetent	sole practitioner	No technical breach found by Professional Conduct Committee	Member given suggestion that he should not make antagonistic comments to the press
21	Writing by architect June, 1975		Violation Regulations 51(a) and 53 - failure to notify of takeover - injuring falsely or maliciously professional reputation of complainant	Small firm	Technical breach found by Professional Conduct Committee	Accused and complainant both counselled
22	Writing by architect July, 1975		Violation Regulation 56 - breach of advertising rules in newspaper advertisement by accused	Sole practitioner	No breach found by Professional Conduct Committee	No action
23	OAA September, 1975		In course of enforcement proceedings against a third party (non-member), evidence adduced showing stamping by accused of non-member's drawings and violation Regulation 35	Sole practitioner	Disciplinary charge laid before Registration Board (formal complaint)	Membership suspended one year - reinstatement possible after 6 months on proof to Board of continuing rehabilitation from alcoholism

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
24	Writing by University Society Legal Aid July, 1975		Accused fired employee "for being useless" (employee retained complainant as adviser)	medium-sized firm	OAA wrote complainant to advise had no jurisdiction - also wrote accused nonetheless and considered response - Professional Conduct Committee satisfied with response	No further action
25	Writing by architect July, 1975		Violation Regulation 51(a)	Small firm	No proof of breach where not shown accused was aware of complainant (Professional Conduct Committee)	No action
26	Writing by architect July, 1975		Violation Regulation 51(a)	Medium-sized firm	Misunderstanding by client found - no breach established (Professional Conduct Committee)	No action
27	OAA July, 1975		Violation Regulation 35	Medium-sized firm	Found firm (accused) did the architecture and non member, only interior work - no breach established (Professional Conduct Committee)	No action
28	Writing by architect August, 1975		Violation Regulation 43 - members not to compete for professional work in fees [NOTE: Regulation 43 no longer exists (Combines Investigation Act), but OAA thinks it's unprofessional to compete blatantly on basis of fees]	Small firm	No breach found (Professional Conduct Committee) because of type of client (Housing Authority)	Accused counselled extensively

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
29	Writing by architect August, 1975		Violation Regulation 43 (client apparently accepted higher tender)	Small firm	No fault found with accused by Professional Conduct Committee - fault was client's	No action
30	Writing by architect September, 1975		Violation Regulation 33(b) - engaging in architecture with a non-member	Small firm	Technical breach found by Professional Conduct Committee	Accused counselled
31	Writing by architect August, 1975		Violation Regulation 43	Sole practitioner	Found to be "not really a case of undercutting" by Professional Conduct Committee	No action
32	Drawings mailed November, 1975		Violation Regulation 32(f) - engineers' drawing sheets used to do architects' work	Sole practitioner	Accused given "benefit of the doubt" though Professional Conduct Committee found technically there was breach	Accused counselled
33	OAA October, 1975		Violation Regulation 35	Employee engineering corporation	Found accused "being used" by Professional Conduct Committee and opportunity to resign from engineering firm given - accused refused and formal charge laid before Council	Held pending result in court of case 15 - after OAA lost case 15, accused here merely written to.
34	Writing by architect November, 1975		Defamation of character	Small firm	Complainant withdrew complaint - not serious in any event	No action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
35	OAA March, 1976		Violation of Regulations 35 and 39 (aiding non-architect and practising under firm name indicating non-member is an architect)	Small firm	Technical breach found by Professional Conduct Committee in advertising material of accused	Accused advised to remedy the advertising and not to repeat similar representations
36	Writing from large firm February, 1976		Violation Regulation 54 (passing off other member's work as own)	Large firm	Arose from splitting of partnership and Professional Conduct Committee unable to adjudicate which party at fault - parties left to resolve matter themselves	No action
37	OAA March 10, 1976		Re scandal Hospital	Small firm	Executive Director OAA investigated him- self and found no impropriety in accused's actions	No action
38	Drawings mailed April, 1976		Violation Regulation 35	Sole practitioner	Technical breach found by Professional Conduct Committee	Accused counselled
39	Writing from architect March, 1976		Violation Regulation 56 - advertising in newspaper in "classified" section	Sole practitioner	No violation of intent of Regulation 56 found by Professional Conduct Committee	No action
40	Writing from architect April, 1976		Violation Regulation 33(K) (use of name not approved by Registration Board) - no memorandum of practice filed	Small firm	Technical breach found by Professional Conduct Committee	Accused counselled to file appropriate memorandum
41	Writing from client May, 1976		Dissatisfaction with architects' services - poor design (or construction) of a beam and architect left project for holiday at inopportune time	Sole practitioner	Professional Conduct Committee went to see project to check "beam defect" allegation- "beam problems" did exist, but not all architects fault-but accused had left for holiday with project in poor state	Accused counselled that when goes on vacation, project should be left in better state - problems on project were also cause for counselling

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
42	Writing from architect July, 1976		Violation Regulation 35	Small firm	Professional Conduct Committee recommended formal complaint - direct breach of Regulation 35 found by Professional Conduct Committee	Held pending result of cases 15 and 33 in court no action taken once OAA lost case 15
43	Telephone from architect August, 1976		Violation Regulation 37 - providing professional services at unreasonably low fees to obtain professional work	Sole practitioner	Technical breach found by Professional Conduct Committee	Accused required to retract a submission and make a proper one to clarify the extent of his services
End of Cases listed in Document E-4 - Appendix C to "History and Organization of Architecture Profession"						
44	Telephone then writing from Chapter of OAA September, 1976		Violation of Regulation 35	Sole practitioner	No proof of a technical breach as difficult to see who was doing what - but all cleared up to complainant's satisfaction and member clarified the confusing relationship	No further action
45	Writing from architect September, 1976		Advertising violation	Sole practitioner	Discovered that press person had misquoted accused so no breach found	No further action
46	Writing from architect September, 1976		Violation Architects Act s. 16 - graduate associate allegedly holding self out as architect	Graduate associate	Accused found to be doing interior design for his interior designer wife - no breach found by Professional Conduct Committee	No further action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
47	Writing from architect November, 1976		Violation Regulation 35	Sole practitioner	Inaccurate reporting by press discovered	No action
48	Writing from engineer December, 1976		Violation Regulation 32(f) - stamping drawings of another	Sole practitioner	Formal complaint recommended to Council by Professional Conduct Committee for the technical breach - matter sent to Registration Board	Registration Board suspended accused for four (4) months
49	Telephone from official December, 1976		Inadequate Drawings	Sole practitioner	Chairman of Professional Conduct Committee and Executive Director OAA went to see drawings - told official that drawings were inadequate and that he could tell the accused to improve the drawings - but official does not need OAA approval - presume matter was cleared up [OAA talks to officials as part of its public service.]	No further action
50	Writing from architect January, 1977		Advertising violation	Small firm	No breach found	No action
51	Writing from client January, 1977		Fees - charge of \$200/visit for 4 visits and client says only 3 visits made - architect blamed for construction defects (when only hired to inspect for bank)	Medium-sized firm	Architect only hired to inspect for financier - not responsible for defects alleged - client got "more than he deserved" (Professional Conduct Committee), though accused should not have done what he did as a matter of common sense	No further action

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
52	Writing from architect January, 1977		Architect was consultant to a municipality	Sole practitioner	Professional Conduct Committee has no jurisdiction and feels nothing wrong - complainant has complained several times, without substance	No action
53	Verbal from client September, 1976 (on advice of client's lawyer)		Accused had been given a sketch by client and failed to deliver what expected-building could not be put on site-accused sued for his fees-complainant complained to OAA on her lawyer's advice	Sole practitioner	OAA proceeded though with fear of being called upon to take sides in the litigation - Professional Conduct Committee found a proper agreement and said it was client's contract problem	Executive Director OAA instructed to write accused to find out how problem resolved (apparently has been resolved now)
54	Writing from client July, 1976		Accused did not fulfill contractual obligations by doing the drawings	Sole practitioner	Professional Conduct Committee investigation revealed accused's membership lapsed April, 1976-all work done before then-client advised no jurisdiction as accused not now a member-accused came to P.C.C. January 1977-found he'd held self out as architect after April 1976-client advised to sue-OAA sought opinion on their jurisdiction over non-member accused-accused advised if he ever reapplied, hearing would be held into "good character" requirement	Matter still pending before Professional Conduct Committee

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
55	Writing from architect January, 1977		Passing work of another member off as own	Large firm	Being investigated now	Pending before Professional Conduct Committee
56	Writing from architect February, 1977		Conflict of Interest	Small firm	No technical breach but Professional Conduct Committee concerned-whole matter of members sitting on public boards (potential clients) now under review by all internal bodies of OAA	No action
57	Writing from Architect March, 1977		Violation of Regulation 53 (malicious injury to reputation)	Professors of Architecture	Professional Conduct Committee has recommended formal complaint to Council-case being prepared	Pending before Registration Board
58	from architect February, 1977		Nebulous complaint-complainant is frequent complainer and complaints never have substance	several people	Professional Conduct Committee asked for substantiation-none yet received	Pending before Professional Conduct Committee
59	File 146		File missing - no information available - believed file may relate to a matter before Registration Board.			

Case No.	Source and Date of Complaint	Place of Occurrence	Details of Complaint	Accused	Action Taken	Ultimate Disposition
60	Writing from architect April, 27, 1977		Violation Regulations 51 and 53 (unscrupulous means to take a commission) complaint went to Ontario and Quebec Associations	Small firm	Complainant's lawyer suggested Quebec Association investigate first-building is in Quebec-Quebec Association indicated no merit in the complaint-accused has now been invited to next Professional Conduct Committee's meeting	Pending before Professional Conduct Committee
61	Writing from architect February 2, 1977		Violation Regulation 54 (passing off work of other member as own) and Regulation 69 (copying drawings of another member)	Small Firm	Formal complaint heard by Registration Board-violation of Regulation 54 established but felt nothing beyond finding of guilt appropriate	Guilty of Violation of Regulation 54 - copy of Reasons for Decision and Penalty (which names accuseds) to be provided to OAA membership

TABLE XXI

FORMAL COMPLAINTS BEFORE O.A.A. REGISTRATION BOARD 1971-1977

<u>Date</u>	<u>Case No.</u>	<u>Nature of Complaint</u>	<u>Disposition</u>
	1	Present Reg. 35	Membership cancelled December 13, 1973
	2 (2 accuseds)	Present Regs. 69, 38, 49	Found guilty - no penalty November, 1974
Dec. 16/74	3	Present Reg. 35	Membership cancelled, December, 1974.
	4.	Misled client re drawings and copyright	Dismissed, March, 1975
	5	Present Reg. 35	Sentence October 10, 1975 - Membership sus- pended for 1 year - being appealed.
	6	Present Reg. 35	Reprimanded June, 1975
Oct. 10/75	7	Present Reg. 35	Membership suspended 1 year to January 1977 with provision that membership may be re- stored at any time after 30 January, 1976 upon production of evidence satisfactory to the Board of his continuing re- habilitation from alcoholism
Noy. 18/75	8	Present Reg. 32(f)	Membership cancelled, December 10, 1975
	9	Present Reg. 35	Membership suspended for 3 months - being appealed
	10	Present Reg. 35	Guilty - no penalty, April 23, 1976
June 10/77	11 (2 accuseds)	Present Regs. 54 and 69	Guilty of 2 breaches of Reg. 54 - no penalty - reasons for decision distributed to membership (See notice to O.A.A. members about this case reproduced in Appendix VII.)

APPENDICES

TO

DISCIPLINE AS A MEANS OF ASSURING CONTINUING
COMPETENCE IN THE PROFESSIONS

by

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Prepared for
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APPENDIX I - LAW

The Law Society Act
R.S.O. 1970, c. 238
and Regulations (excerpts)

DISCIPLINE

~~33.~~ (1) No disciplinary action under section 34, 35, 37 or 38 shall be taken unless,

- (a) a complaint under oath has been filed in the office of the Secretary and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) a committee of Convocation has heard evidence of or on behalf of the complainant and, if the persons whose conduct is being investigated appears at the hearing and so requests, has heard his evidence and any evidence on his behalf and has reached the decision that he is guilty

(2) Any person presiding at a hearing may administer oath to witnesses and require them to give evidence under oath

(3) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence

(4) Hearings shall be held *in camera*, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the Secretary before the day fixed for the hearing, the committee may conduct the hearing in public or otherwise as it considers proper.

(5) A hearing may be adjourned at any time and from time to time

(6) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in subsection 10, but such person shall be advised of his right to object to answer any question under section 9 of *The Evidence Act* and section 5 of the *Canada Evidence Act*.

(7) At a hearing, the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively and to cross examine the witnesses opposed in interest, including the deponent of an affidavit or a statutory declaration submitted in evidence

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by *The Evidence Act*.

(9) The rules of evidence applicable in civil proceedings are applicable at a hearing, except that an affidavit or statutory declaration of any person is admissible in evidence as *prima facie* proof of the statements made therein

(10) The Treasurer, the chairman or a vice-chairman of a committee of Convocation, or the Secretary may, and the Secretary upon application of a person whose conduct is being investigated shall, issue a summons in the prescribed form commanding the attendance and examination of any person as a witness, and the production of any document or thing, the production of which could be compelled at the trial of an action, before the committee at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court.

(11) If any person,

- (a) on being duly summoned to appear as a witness makes default in attending, or
- (b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document or thing in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or
- (c) does any other thing which would, if the committee had been a court of law having power to commit for contempt, have been contempt of that court

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any submissions that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

(12) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision.

(13) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him or by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Society,

and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient. R.S.O. 1970, c. 238, s. 33.

34. If a member is found guilty of professional misconduct or of conduct unbecoming a barrister and solicitor after due investigation by a committee of Convocation, Convocation may by order cancel his membership in the Society by disbarring him as a barrister and striking his name off the roll of solicitors or may by order suspend his rights and privileges as a member for a period to be named or may by order reprimand him or may by order make such other disposition as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 34.

35. If a member has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by a committee of Convocation incapable of practicing law as a barrister and solicitor by reason of age, physical or mental illness including addiction to alcohol or drugs, or any other cause, Convocation may by order limit or suspend his rights and privileges as a member for such time and on such terms as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 35.

...

37. If a committee of Convocation finds that a member has been guilty of professional misconduct or conduct unbecoming a barrister and solicitor which in its opinion does not warrant disbarment, suspension or reprimand in Convocation, the committee may by order reprimand him. R.S.O. 1970, c. 238, s. 37.

38. If a student member is found after due inquiry by a committee of Convocation guilty of conduct unbecoming a student member, the committee may by order reprimand him or Convocation may by order cancel his student membership or may by order suspend his rights and privileges as a student member for a period to be named or may by order reprimand him or may by order make such other disposition as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 38.

39.—(1) Any member who has been found guilty under section 37 or any student member who has been found guilty under section 38 and, in either case, has been ordered to be reprimanded in committee, may appeal from the order of reprimand to Convocation within fifteen days from the day upon which he is served with the order of the committee.

(2) An appeal under this section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy of the proceedings before the committee, the evidence taken, the committee's report and all decisions, findings and orders of the committee in the matter.

(3) Upon the hearing of an appeal under this section, Convocation may vary the punishment imposed by the committee or may refer the matter or any part thereof back to a committee with such directions as it considers proper or may make such order as it considers proper in the circumstances.

(4) No benchler who sat on the committee of Convocation when the order appealed from was made shall take any part in the hearing of the appeal in Convocation.

(5) Subject to section 44, the decision of Convocation under this section is final and not subject to any further appeal. R.S.O. 1970, c. 238, s. 39.

40. A person whose membership or student membership has been cancelled or whose rights and privileges as a member or student member have been suspended or who has been reprimanded may be ordered to pay the expense, or part of the expense, incurred by the Society in the investigation or hearing of any complaint in respect of which he has been found guilty. R.S.O. 1970, c. 238, s. 40.

41. Where it appears that disciplinary proceedings against a member or student member were unwarranted, Convocation may order that such costs as it considers just be paid by the Society to the member or student member whose conduct was the subject of the proceedings. R.S.O. 1970, c. 238, s. 41
...

43. (1) Where a member or former member dies, disappears or leaves Ontario or a person's membership in the Society is cancelled or his rights and privileges as a member are suspended and, in any such event, his practice is neglected to the prejudice of any person or no provision has been made for the protection of his clients' interests, a judge of the Supreme Court may, upon an *ex parte* application by the Society, by order appoint a person as trustee, with or without bond, to take possession of any property in the possession of or under the control of such member or former member for the purpose of preserving, carrying on or winding up the practice of such member or former member.

(2) A person appointed under subsection 1 shall, in respect of any trust property of such member or former member, be the trustee thereof, and he shall in respect thereof take the place of the personal representative, committee or other representative, if any, of such member or former member.

(3) Any person may apply to a judge of the Supreme Court for an order varying or discharging any order made under subsection 1.

(4) The judge may in any order under this section make provision for the remuneration, disbursements and indemnification of the trustee out of such moneys or otherwise as the judge may specify. R.S.O. 1970, c. 238, s. 43.

44. (1) Any person dissatisfied with a decision of Convocation made under section 30, 32 or 46, or any person against whom an order has been made under section 34, 35 or 36, or any person against whom an order, other than an order of reprimand in committee, has been made under section 48, or any person whose punishment has been ordered to be increased under subsection 3 of section 39 may appeal from the decision or order to the Court of Appeal within fifteen days from the day upon which he is served with the decision or order.

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the Secretary shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence in Convocation and any committee thereof in dealing with and disposing of the matter complained of.

(3) If the appellant fails to pay the cost of the certified copy and the cost of such additional copies of the evidence as may be reasonably required for the purposes of the appeal within fifteen days after written demand from the Secretary, the appeal shall be deemed to be abandoned.

(4) An appeal under this section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy, certified by the Secretary, of the proceedings before Convocation or any committee thereof, the evidence taken, the report of Convocation or any committee thereof and all decisions, findings and orders of Convocation or any committee thereof in the matter.

(5) Except as otherwise provided, appeals under this section shall be in accordance with the practice in appeals from the decision or order of a judge of the Supreme Court.

(6) Upon the hearing of an appeal under this section the Court of Appeal may make such order as the court considers proper or may refer the matter or any part thereof back to Convocation with such directions as the court considers proper.

(7) The Court of Appeal may make such order as to the costs of the appeal as the court considers proper. R.S.O. 1970, c. 238, s. 44.

45. (1) When a person's membership or student membership is cancelled, all his rights and privileges as a member or student member, as the case may be, cease, or, when a person's membership or student membership is suspended, the member or student member shall, during the period of suspension, possess no rights or privileges as a member or student member.

(2) Where an appeal under section 44 is pending, the decision or order appealed against shall not thereby be stayed, but an application may be made to a judge of the Court of Appeal for a stay of the decision or order pending the disposition of the appeal, and the judge may dispose of the application as he considers proper and in so doing he may impose such terms and conditions as he considers appropriate. R.S.O. 1970, c. 238, s. 45.

46. Where a person's membership or student membership is cancelled, he may apply to be readmitted, and Convocation, after due inquiry by a committee thereof, may readmit him as a member or student member, as the case may be. R.S.O. 1970, c. 238, s. 46.

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48. Upon the readmission of a person as a member or student member or upon the termination of the suspension of the rights and privileges of a member or student member, or upon the reprimand of a member or student member, Convocation or a committee thereof may impose upon him such terms and conditions as it considers proper. R.S.O. 1970, c. 238, s. 48.

49. Notice of admission to membership and of any cancellation of pension, resignation, readmission or other change in a member's status in the Society shall be given forthwith by the Secretary to the Registrar of the Supreme Court who shall keep a record thereof. R.S.O. 1970, c. 238, s. 49.

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COMPENSATION FUND

51. (1) The Society shall continue to maintain the fund known as "the Compensation Fund" and shall continue to hold it in trust for the purposes of this section.

(2) The Compensation Fund shall be made up of,

- (a) all moneys paid by members of the Society under subsection 3;
- (b) all moneys earned from the investment of moneys in the Fund;
- (c) all moneys recovered under subsection 7; and
- (d) all moneys contributed by any person.

(3) Every member, other than those of a class exempted by the rules, shall pay to the Society for the Compensation Fund such sum as is prescribed from time to time by the rules.

(4) The Society may insure with any insurer licensed to carry on business in Ontario for such purposes and on such terms as Convocation considers expedient in relation to the Compensation Fund, and, in such event, the moneys in the Fund may be used for the payment of premiums.

(5) Convocation in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which he was or is a trustee, notwithstanding that after the commission of the act of dishonesty he may have died or ceased to administer his affairs or to be a member.

(6) No grant shall be made out of the Compensation Fund unless notice in writing of the loss is received by the Secretary within six months after the loss came to the knowledge of the person suffering the loss or within such further time, not exceeding eighteen months, as in any case may be allowed by Convocation.

(7) If a grant is made under this section, the Society is subrogated to the amount of the grant to any rights or remedies to which the person receiving the grant was entitled on account of the loss in respect of which the grant was made against the dishonest member or any other person, or, in the event of the death or insolvency or other disability of such member or other person, against his personal representative or other person administering his estate.

(8) A person to whom a grant is made under this section, or, in the event of his death or insolvency or other disability, his personal representative or other person administering his estate, has no right to receive anything from the dishonest member or his estate in respect of the loss in respect of which the grant was made until the Society has been reimbursed the full amount of the grant.

(9) Where a grant has been made under this section and the dishonest member has been declared a bankrupt, the Society is entitled to prove against the bankrupt's estate for the full amount of the claim of the person to whom the grant was made and to receive all dividends on such amount until the Society has been reimbursed the full amount of the grant.

(10) Convocation may delegate any of the powers conferred upon it by this section to a committee of Convocation and, whether or not Convocation has made any such delegation, it may appoint any member as a referee and delegate to him any of the powers conferred upon it by this section that are not delegated to a committee.

(11) Where Convocation has delegated any of its powers under this section to a committee or to a referee, the committee or referee, as the case may be, shall report as required to Convocation, but where there is a delegation to both a committee and a referee, the referee shall report as required to the committee.

(12) There may be paid out of the Compensation Fund the costs of its administration, including the costs of investigations and hearings and all other costs, salaries, and expenses necessarily incidental to the administration of the Fund. R.S.O. 1970, c. 238, s. 51.

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53. The Society may make arrangements for its members respecting indemnity for professional liability and respecting the payment and remission of premiums in connection therewith and prescribing levies to be paid by members or any class thereof and exempting members or any class thereof from all or any part of any such levy. R.S.O. 1970, c. 238, s. 53.

RULES

54. (1) Subject to section 55, Convocation may make rules relating to the affairs of the Society and, without limiting the generality of the foregoing,

1. providing procedures for the making, amendment and revocation of the rules;

2. prescribing the seal and the coat of arms of the Society;
3. providing for the execution of documents by the Society;
4. respecting the borrowing of money and the giving of security therefor;
5. fixing the financial year of the Society and providing for the audit of the accounts and transactions of the Society;
6. providing for the time and manner of and the methods and procedures for the election of benchers;
7. providing procedures for the election of the Treasurer, the filling of a vacancy in the office of Treasurer, the appointment of an acting Treasurer to act in the Treasurer's absence or inability to act, and prescribing the Treasurer's duties;
8. providing for the appointment of and prescribing the duties of the Secretary, one or more deputy secretaries and assistant secretaries and such other officers as are considered appropriate;
9. respecting Convocation;
10. providing for the establishment, composition, jurisdiction and operation of standing and other committees and delegating to any committee such of the powers and duties of Convocation as may be considered expedient;
11. governing honorary benchers, *ex officio* benchers and honorary members and prescribing their rights and privileges;
12. governing members, life members and student members, and prescribing their rights and privileges;
13. prescribing fees and levies for members and student member or any class of either of them, and providing for the payment and remission thereof and exempting any class of either of them from all or any part of such fees or levies;
14. respecting the Compensation Fund and prescribing the amount of the levy to be paid to the Society for the Fund and exempting any class of members from all or any part of such levy;
15. prescribing oaths for members and student members;
16. providing for the payment to the Society by any member of the cost of any investigation or audit of his books, records, accounts and transactions;
17. providing for and governing meetings of members or representatives of members;

18. prescribing procedures for the call to the bar of barristers and the admission and enrolment of solicitors;
19. defining and governing the employment of student members while under articles;
20. providing and governing bursaries, scholarships, medals and prizes;
21. providing for and governing extension courses, continuing legal education, and legal research;
22. governing degrees in law;
23. providing for and governing libraries;
24. providing for the occasional appearance as counsel in the courts of Ontario and before provincial judges, with the consent of the Treasurer and of the court or judge, of members of the legal profession from outside Ontario;
25. providing for the establishment, maintenance and administration of a benevolent fund for members and the dependants of deceased members;
26. prescribing forms and providing for their use, except the form of summons referred to in subsection 10 of section 33.

(2) The rules made under subsection 1 shall be interpreted as if they formed part of this Act. R.S.O. 1970, c. 238, s. 54 (1, 2)

(3) A copy of the rules made under subsection 1, as amended from time to time,

(a) shall be filed in the office of the Attorney General; and

(b) shall be available for public inspection in the office of the Secretary. R.S.O. 1970, c. 238, s. 54 (3), 1972, c. 1, s. 9 (7).

REGULATIONS

55. Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 54 and, without limiting the generality of the foregoing,

1. respecting any matter ancillary to the provisions of this Act with regard to the admission, conduct and discipline of members and student members and the suspension and restoration of their rights and privileges, the cancellation of memberships and student memberships, the resignation of members, and the readmission of former members and student members;

2. requiring and prescribing the books, records and accounts to be kept by members and providing for the exemption from such requirements of any class of members;
3. requiring and providing for the examination or audit of members' books, records, accounts and transactions and the filing with the Society of reports with respect thereto;
4. authorizing and providing for the preparation, publication and distribution of a code of professional conduct and ethics;
5. respecting the reporting and publication of the decisions of the courts;
6. defining and governing the employment of barristers and solicitors clerks;
7. respecting legal education, including the Bar Admission Course;
8. providing for the establishment, operation and dissolution of county and district law associations and respecting grants and loans to such associations;
9. prescribing the form of the summons referred to in subsection 10 of section 33. R.S.O. 1970, c. 238, s. 55.

Regulations 12, 13, 14, 15, 16, 17, 19, 22 and 23.

DISCIPLINE

INTERPRETATION

12. In this section and in sections 13 and 14,

- (a) "chairman" means the chairman of the Committee;
- (b) "Committee" means the Discipline Committee;
- (c) "vice-chairman" means the vice-chairman of the Committee

INVESTIGATION AND HEARING OF COMPLAINTS

13. (1) Where information comes to the notice of the Society that indicates that a member may have been guilty of professional misconduct or of conduct unbecoming a barrister and solicitor, the Secretary shall make such preliminary investigation of the matter as he considers proper, and where in his opinion there are reasonable grounds for so doing, he shall refer the matter promptly to the Committee or the chairman or vice-chairman for further directions.

(2) Subject to the directions of the Committee or the chairman or vice-chairman, the Secretary shall,

- (a) prepare and complete or cause to be completed under oath a complaint and file it in the office of the Secretary;
- (b) serve upon the member whose conduct is being investigated a copy of the complaint, a notice of the time and place of the hearing and a summons requiring him to attend thereat; and
- (c) make all necessary arrangements for the conduct of the hearing, including as appropriate, the appointment of counsel for the Society, the arrangements for oral evidence to be taken down in writing, the issue of summonses to witnesses, the production of documents and things, and the notification to all members of the Committee of the time and place of the hearing.

(3) Subject to subsection 4, a quorum of the Committee is three members of the Committee who are not *ex officio* benchers.

(4) A quorum of the Committee for the granting of an uncontested adjournment is one member of the Committee who is not an *ex officio* bencher.

(5) The Committee may amend a complaint, but where in the opinion of the Committee the member may be prejudiced by the amendment, the Committee shall adjourn the hearing of the complaint as amended to a later date.

(6) Where at the conclusion of the hearing of a complaint or amended complaint against a member, such complaint or amended complaint has been established to the satisfaction of the Committee and the Committee has not by order reprimanded him, the Committee shall report in writing to Convocation setting forth a summary of the evidence at the hearing, its findings of fact and conclusions of law, if any, based thereon and its recommendations as to the action to be taken by Convocation on the complaint.

(7) The Secretary shall,

- (a) prepare the report referred to in subsection 6 for approval by the Committee, and the Committee's approval shall be evidenced by the signature thereto of the member of the Committee who presided at the hearing or in his absence by another member of the Committee who was present at the hearing; and
- (b) serve upon the member whose conduct is being investigated a copy of the report as so approved, a notice of the time and place of the Convocation that will consider the report, a summons requiring him to attend thereat and a notice substantially as follows:

"If you intend to dispute any statement of fact or finding of fact contained in the attached report of the Discipline Committee at the time of its consideration by Convocation, you are required to file with the Secretary not later than the day preceding Convocation a written statement setting forth any such statement of fact or finding of fact that you intend to dispute."

INVITATIONS TO ATTEND

14. Where there comes to the notice of the Society, as a result of a preliminary investigation by the Secretary or otherwise, information that indicates that a member may have been guilty of a minor breach of discipline or that indicates there is a possibility that his conduct may result in a breach of discipline, the Committee or the chairman or vice chairman may direct the Secretary, without any formal complaint being completed and filed, to invite the member to appear before the Committee to enable it to make an informal investigation of the matter, and the Committee, in addition to any of its other powers, may after such informal investigation advise the member with respect to the matter.

STUDENT MEMBERS

15. Sections 13 and 14 apply *mutatis mutandis* to student members in respect of conduct unbecoming a student member.

RESIGNATIONS

16. (1) Every application of a member or student member for permission to resign shall be in writing and sent to the Secretary accompanied by a statutory declaration (or if the applicant is not a resident of Canada, an affidavit) setting forth,

- (a) his age, date of call to the bar, place of residence, office address, if any, number of years in practice, if any, and stating briefly the reasons for the application;
- (b) that all trust funds or clients' property for which the applicant was responsible have been accounted for and paid over to the persons entitled thereto and an accountant's certificate to that effect shall be attached and marked as an exhibit or, alternatively, that the applicant has not handled trust funds or other clients' property;
- (c) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister and solicitor or, alternatively, that the applicant has not engaged in practice;
- (d) that the applicant is not aware of any claim against him in his professional capacity or in respect of his practice; and
- (e) such additional information or explanation as may be relevant by way of amplification of the foregoing.

(2) The applicant shall also furnish proof of publication in the Ontario Reports of a notice of his intention to apply for permission to resign in the form prescribed in the rules, such notice to be published at least thirty days before the application is sent to the Secretary.

(3) Every application for permission to resign shall be referred to the Finance Committee for consideration and report to Convocation.

(4) The Finance Committee may require additional information and may accept undertakings from the applicant and in reporting its recommendations to Convocation it may include conditions which are to be complied with by the applicant as a term of granting permission to resign.

(5) Where the applicant believes that there may be good reason for dispensing with any of the foregoing requirements, he may make application to the Finance Committee setting forth his reasons and the Committee may in its discretion dispense with any of such requirements.

(6) Where a member has been found to be mentally incompetent and a committee of his affairs has been appointed, the application for permission to resign may be made by his committee.

(7) Notwithstanding anything in subsections 1 to 6, if a report of the Discipline Committee is before Convocation recommending the disbarment of a member, the member may request Convocation to permit him to resign, and Convocation may grant the request upon such terms and conditions as it considers proper.

BOOKS, RECORDS AND ACCOUNTS

INTERPRETATION

17. In this section and in sections 18 to 22,

- (a) "client" includes any person or body of persons, corporate or unincorporate, from whom or on whose behalf a member in connection with his practice receives money or other property;
- (b) "member" includes a firm of members;
- (c) "money" includes current coin, government or bank notes, cheques, drafts, post office orders or express or bank money orders.

RECORDS

19.--(1) Every member shall maintain books, records and accounts in connection with his practice to record all money and other negotiable property received and disbursed, and as a minimum requirement every member shall maintain,

- (a) a book of original entry showing the date of receipt and source of money received in trust for each client and identifying the client on whose behalf the trust money is received;
- (b) a book of original entry showing all disbursements out of money held in trust for each client and showing each cheque number, the date of each disbursement, the name of each recipient, and identifying the client on whose behalf each disbursement is made out of money held in trust;
- (c) a clients' trust ledger showing separately for each person on whose behalf money has been received in trust all such money received and disbursed and any unexpended balance;
- (d) a record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made;
- (e) a book of original entry showing the date of receipt and source of all money received other than trust money;

- (f) a book of original entry showing all disbursements of money other than trust money and showing each cheque or voucher number, the date of each disbursement, and the name of each recipient;
- (g) a fees book or chronological file of copies of billings showing all fees charged and other billings to clients, the dates such charges are made, and identifying the clients so charged;
- (h) a record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the books and records together with the reasons for any differences between the totals and supported by:
 - (i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held, and,
 - (ii) a detailed reconciliation made monthly of each trust bank account, and

such detailed listings and reconciliations shall be retained as records supporting the monthly trust comparisons;

- (i) a record showing all negotiable or other valuable property, other than money, held in trust from time to time for all clients;
 - (j) bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
- (2) The books, records and accounts required to comply with subsection 1,

- (a) shall be entered and posted currently at all times, and the trust comparison required by clause *h* of subsection 1 shall be made monthly within fifteen days from the effective date of each comparison;
- (b) shall be entered and posted in ink or a duplication thereof, or by machine, and shall be preserved for at least the six-year period previous to the most recent fiscal year-end of the member, with the exception of trust cash receipt and disbursement books of original entry and the books and records required by clauses *c*, *h* and *i* of subsection 1 which shall be preserved for at least ten years.

INVESTIGATION

22. (1) The chairman or a vice-chairman of the Discipline Committee may at any time require an investigation to be made by a person designated by him of the books and accounts of any member for the purpose of ascertaining and reporting whether sections 18, 19 and 20 have been and are being complied with by such member who shall produce forthwith to such person all evidence, vouchers, records, books, papers and shall furnish such explanations as such person may require for the purpose of his investigation.

(2) Before instituting an investigation on a complaint made by a third person, the chairman or vice-chairman of the Discipline Committee may require *prima facie* evidence that a ground of complaint exists.

(3) All investigations commenced under this section shall be reported monthly to the Treasurer.

(4) Nothing in this section limits the right of Convocation or the Discipline Committee to institute further investigations or to require the filing of other reports.

CODE OF ETHICS

23. (1) The Professional Conduct Committee is authorized to prepare and publish a handbook containing the code of professional conduct and ethics and the rulings with respect thereto under the title "Professional Conduct Handbook".

(2) Until such time as a new edition of the Professional Conduct Handbook is published, the Secretary shall furnish a copy of the current edition thereof to every person who becomes a member or student member and, upon request, to any other person.

(3) When a new edition of the Professional Conduct Handbook is published, the Secretary shall furnish a copy thereof to every member and student member and, upon request, to any other person.

Rules 27, 37 and 38.

STANDING COMMITTEES OF CONVOCATION

COMMITTEES ESTABLISHED

27. There shall be the following standing committees of Convocation:

1. Finance.
2. Legal Education.
3. Admissions.
4. Discipline.
5. Professional Conduct.
6. Libraries and Reporting.
7. Unauthorized Practice.
8. Public Relations.
9. Legislation and Rules.

DISCIPLINE COMMITTEE

RESPONSIBILITIES

37. The Committee is responsible to Convocation for all matters relating to the conduct and discipline of members and student-members and for the administration of the Compensation Fund, and it may make such arrangements and take such steps as it considers advisable to carry out its responsibilities.

PROFESSIONAL CONDUCT COMMITTEE

COMPOSITION

38.—(1) The Professional Conduct Committee shall be composed of the chairman and the vice-chairman of the Discipline Committee, a member of the Legal Aid Committee, and at least four other members.

RESPONSIBILITIES

(2) The Committee is responsible to Convocation for dealing with all matters relating to professional conduct and making reports and recommendations to Convocation with reference thereto.

(3) The Committee may give members and student members of the Society such opinions, advice and assistance as may be deemed advisable, and, subject to the approval of Convocation, may make such rulings and take such further steps as the Committee deems necessary and advisable for the maintenance of the highest standards of conduct.

Law Society of Upper Canada
Professional Conduct Handbook (excerpts)

Rulings 1, 9, 20 and 33.

Ruling 1

CANONS OF ETHICS

Adoption by Convocation

Convocation has adopted as Ruling 1 the Canons of Legal Ethics of The Canadian Bar Association. They are set out below together with the prefatory statement made by the Association:

CANONS OF LEGAL ETHICS

Approved by The Canadian Bar Association, at the Fifth Annual Meeting, Ottawa, September 2nd, 1920, as a correct, though not exhaustive, statement of some of the ethical principles which should be observed by the members of the legal profession.

It is not possible to frame a set of rules which will particularize all the duties of the lawyer in all the varied relations of his professional life, and no attempt has been made to do so.

The following Canons of Ethics should therefore be construed as a general guide and not as a denial of the existence of other duties equally imperative though not specifically mentioned.

The lawyer is more than a mere citizen. He is a minister of justice, an officer of the Courts, his client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities, it is his duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to his clients, candid and courteous in his intercourse with his fellows and true to himself.

1. *To the State*

(1) He owes a duty to the State, to maintain its integrity and its law and not to aid, counsel, or assist any man to act in any way contrary to those laws.

(2) When engaged as a public prosecutor his primary duty is not to convict, but to see that justice is done; to that end he should withhold no facts tending to prove either the guilt or innocence of the accused.

Ruling 9

DISBARRED PERSONS

Employment by solicitors

No member of The Law Society of Upper Canada shall without the express approval of Convocation retain, occupy office space with, use the services of or employ in any capacity having to do with the practice of law any person who in Ontario, or elsewhere, has been disbarred and struck off the Rolls, or has been suspended, or has been involved in disciplinary action and has been permitted to resign as a result thereof, and who has not yet been readmitted.

Ruling 20

LETTERS FROM THE LAW SOCIETY

Failure to answer is a disciplinary offence

In a notice to the profession published in February 1945 and republished in January 1955 the Discipline Committee ruled that:

. . . it is a strict duty of a member of the Law Society to reply promptly to any letter received from the Society's Secretary relating to the professional conduct of such member. Failure to do so is, in the opinion of the Committee, professional misconduct and conduct unbecoming a member of the Society and deserving of disciplinary action.

Due respect for the disciplinary jurisdiction of its Law Society would soon disappear not only among its own members but among the public at large, if a member of the Society were permitted to ignore and indeed to defy the earnest efforts of the Society to maintain an unassailable standard of professional conduct.

Ruling 33

NOTIFICATION OF BREACHES TO THE SOCIETY

Unless it be privileged or otherwise unlawful it is proper for any member to bring to the attention of the Society any instance involving or appearing to involve professional misconduct or conduct unbecoming a barrister, solicitor or student-at-law or reflecting on the honour of the Bar and the duty of every member to bring such instances to the Society's attention when they involve shortage of trust funds.

Canadian Bar Association
Code of Professional Conduct (excerpts)

PREFACE¹

The legal profession has developed over the centuries to meet a public need for legal services on a professional basis, that is to say, the provision of advice and representation respecting the protection or advancement of the rights, liberties and property of a person by a trusted adviser with whom such person has a personal relationship and whose integrity, competence and loyalty are assured.²

In order adequately to meet this need for legal services, lawyers and the quality of the service they provide must command the confidence and respect of the public, and that can only be achieved by their establishing and maintaining a reputation for integrity and for high standards of legal skill and care. The lawyers of many countries in the world, despite the differences in legal systems, practices, procedures and customs, have imposed upon themselves substantially the same basic standards, and these standards place the main emphasis upon integrity.

In Canada, the provincial legislatures have entrusted to the legal profession through its Governing Bodies the responsibility of maintaining standards of professional conduct and of disciplining lawyers who fail to meet them. The pertinent laws use various terms to describe conduct which is subject to discipline, such as "professional misconduct", "conduct unbecoming", and "acts derogatory to the honour or dignity of the Bar". Some statutes also provide that disciplinary action may be taken if a lawyer is convicted of an indictable offence, or for "misappropriation or wrongful conversion" or "gross negligence", or for conduct "inimical to the best interests of the public", as well as for breach of the applicable statute itself or of rules or regulations made under it.³ These terms can only be construed in the context of the statutes in which they are used and accordingly no attempt at definition is made here. Generally, the preparation and publication of a code of ethics and professional conduct has been left to the profession, and this responsibility must be accepted and carried out by the profession.

In fulfilling his professional responsibilities the lawyer must necessarily assume various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen, but the fundamental ethical principles are set out in this Code to guide him and provide a framework within which he must with courage and ability undertake to provide the legal services which an ever-changing and complex society requires.⁴ Although each lawyer must decide for himself the extent to which his conduct should rise above the minimum standards, the desire for the respect and confidence of the members of the society which he serves and of the members of his profession should motivate him to maintain the highest possible degree of ethical conduct. The standards of professional conduct of lawyers represent the greatness and strength of the legal profession; it will not and must not permit of any compromise in those standards.

The Code of Professional Conduct which follows can only be understood and applied in the light of its primary concern for the protection of the public interest. This principle is implicit in the legislative grants of self-government referred to above. Inevitably the practical application of the Code's complex provisions to

the diverse situations confronted by an active profession in a changing society will reveal gaps, ambiguities and apparent inconsistencies.⁵ The principle of protection of the public interest will serve to guide the reader to the true intent of the Code.

NOTES

1. The footnotes relate the provisions of the Code to pertinent earlier Canons, Codes, rulings, by-laws, statutes, judicial dicta, text-books and articles, and to certain other materials. They are selective, not exhaustive, and merely supplement the text. For abbreviations and citations key and bibliography, see page 67.
2. "The core of the proposition is that problems of . . . rights or property call for a personal relationship with a trusted adviser, whose discretion is absolute, who serves no master but his client, and whose competence is assured. The codes and traditions of the professions who supply these services support the basic proposition. They also display the uniformity that its truth would lead one to expect." *Bennion*, p. 16.
3. Abstract (1974) of disciplinary provisions:
 - Alberta* The Legal Profession Act, R.S.A. 1970 c. 203
 - s. 47 "conduct unbecoming a barrister and solicitor or a student-at-law"
 - "inimical to the best interests of the public or the members of the Society"
 - "tends to harm the standing of the legal profession generally"
 - British Columbia* Legal Professions Act, R.S.B.C. 1960 c. 214 as am. by S.B.C. 1971 c. 31
 - s. 48 "misappropriation or wrongful conversion"
 - "professional misconduct"
 - "conduct unbecoming a member"
 - "breach of this Act or the Rules made hereunder"
 - s. 56 "convicted of an indictable offence"
 - Manitoba* The Law Society Act, R.S.M. 1970, c. L-100
 - s. 45 "professional misconduct"
 - "conduct unbecoming a barrister, solicitor or student"
 - New Brunswick* The Barristers Society Act, 1931, S.N.B. 1931 c. 50 as am. by S.N.B. 1954 c. 99
 - s. 19 "professional misconduct or conduct unbecoming a barrister or solicitor"
 - default re clients' moneys
 - breach of Act or regulation
 - Newfoundland* The Law Society Act, R.S.N. 1952 c. 115
 - s. 37 "professional misconduct"
 - "conduct unbecoming a Barrister, Solicitor, Student-at-law or Articled Clerk"
 - Nova Scotia* Barristers and Solicitors Act, R.S.N.S. 1967 c. 18
 - s. 28 "professional misconduct"
 - "conduct unbecoming a barrister or articled clerk"
 - s. 31 "absconding, insane or insolvent"
 - Ontario* The Law Society Act, R.S.O. 1970 c. 238
 - s. 34 "professional misconduct"
 - "conduct unbecoming a barrister and solicitor"
 - s. 38 "conduct unbecoming a student member"
 - Prince Edward Island* The Legal Profession Act, R.S.P.E.I. 1951 c. 84 as am. by S.P.E.I. 1969 c. 24
 - s. 45 "professional misconduct"
 - "conduct unbecoming a barrister, attorney, solicitor or articled clerk"
 - Quebec* Bar Act, S.Q. 1966-67 c. 77
 - s. 105 "derogatory to the honour or dignity of the Bar or prejudicial to the discipline of its members"
 - "position or office . . . incompatible with the practice of the profession of advocate"
 - "occupation, industry or trade carried on or the position held is incompatible with the honour or dignity of the Bar"
 - s. 109 re conviction of indictable offence
 - Saskatchewan* The Legal Profession Act, R.S.S. 1965 c. 301

- s. 48 "professional misconduct or conduct unbecoming a barrister and solicitor or gross negligence"
"default in payment of moneys"
"breach of Act, rule or by-law"
- s. 60 "convicted of an indictable offence"

England Cordery on Solicitors (6th, 1968), p. 509:

"... because he has been guilty of an act or omission for which the Solicitors Acts 1957 to 1965 or some other statute prescribes that penalty, or because he has committed an act of misconduct which renders him unfit to be permitted to continue in practice."

(at p. 512): "Misconduct which makes a solicitor unfit to continue in practice may be divided into three kinds: criminal conduct, professional misconduct and unprofessional conduct."

(at p. 514, note (e)): "It has not been thought necessary to distinguish instances of professional misconduct from instances of unprofessional conduct. In both cases the ultimate test is whether the solicitor is or is not fit to remain an officer of the court."

"Is it a personally disgraceful offence or is it not? Ought any respectable solicitor to be called upon to enter into that intimate discourse with (the offender) which is necessary between two solicitors even though they are acting for opposite parties?" per Lord Esher M.R. in *Re Weare* (1893) 2 Q.B. 439 at 446 (C.A.)

"Counsel . . . takes the position that the expressions (unprofessional conduct and professional misconduct) are synonymous . . . I agree . . . that the phrases are often used interchangeably but cannot agree that this is always so . . . Accepting as I do that the terms are not synonymous . . ." per McKay J. in *Re Novak and Law Society* (1973) 31 D.L.R. (3d) 89 at 102 (B.C.S.C.)

- 4. "The law and its institutions change as social conditions change. They must change if they are to preserve, much less advance, the political and social values from which they derive their purposes and their life. This is true of the most important of legal institutions, the profession of law. The profession, too, must change when conditions change in order to preserve and advance the social values that are its reason for being." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and the Organized Bar* (1965) 12 U.C.L.A.L. Rev. 438, 440.
- 5. "It is not possible to frame a set of rules which will particularize all the duties of the lawyer in all the varied relations of his professional life . . ." Sask. Preamble.

CHAPTER II
Canadian Bar Association Code
Competence and Quality of Service

RULE

(a) The lawyer owes a duty to his client to be competent to perform the legal services which the lawyer undertakes on his behalf.¹

(b) The lawyer should serve his client in a conscientious, diligent and efficient manner and he should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation.²

Commentary

1. Competence in the context of the first branch of this Rule goes beyond formal qualification of the lawyer to practise law. It has to do with the sufficiency of the lawyer's qualification to deal with the matter in question and includes knowledge and skill and the ability to use them effectively in the interests of the client.³

2. As a member of the legal profession, the lawyer holds himself out as knowledgeable, skilled and capable in the practice of law. Accordingly his client is entitled to assume that he has the ability and capacity to deal adequately with the legal matters which he undertakes on the client's behalf.⁴

3. It follows that the lawyer should not undertake a matter unless he honestly believes that he is competent to handle it or that he can become competent without undue delay, risk or expense to his client. If the lawyer proceeds on any other basis he is not being honest with his client. This is an ethical consideration and is to be distinguished from the standard of care which a court would invoke for purposes of determining negligence.

4. Competence in a particular matter involves more than an understanding of the relevant legal principles: it involves an adequate knowledge of the practices and procedures by which such principles can be effectively applied. The lawyer should keep abreast of developments in the branches of law wherein his practice lies.

5. The lawyer must be alert to recognize his lack of competence for a particular task and the disservice he would do his client if he undertook that task. If he is consulted in such circumstances he should either decline to act or obtain his client's instructions to retain, consult or collaborate with a lawyer who is competent in that field. The lawyer should also recognize that competence for a particular task may require that he seek advice from or collaborate with experts in scientific, accounting or other non-legal fields, and he should not hesitate to seek his client's instructions to consult experts in such a situation.

6. Numerous examples could be given of conduct which does not meet the quality of service required by the second branch of the Rule. The list which follows is illustrative but not by any means exhaustive:

- (a) failure to keep the client reasonably informed;
- (b) failure to answer reasonable requests from the client for information;

- (c) unexplained failure to respond to the client's telephone calls;
- (d) failure to keep appointments with clients without explanation or apology;
- (e) informing the client that something will happen or that some step will be taken by a certain date, then letting the date pass without follow-up information or explanation;
- (f) failure to answer within a reasonable time a communication that requires a reply;
- (g) doing the work in hand but doing it so belatedly that its value to the client is diminished or lost;
- (h) slipshod work, such as mistakes or omissions in statements or documents prepared on behalf of the client;
- (i) failure to maintain office staff and facilities adequate to the lawyer's practice;
- (j) failure to inform the client or to explain properly proposals of settlement;
- (k) withholding information from the client or misleading the client as to the position of the matter to cover up the fact of neglect or mistakes;
- (l) failure to make a prompt and complete report when the work is finished, or, where a final report cannot be made, failure to make an interim report where one might reasonably be expected;
- (m) self-induced disability, for example from intoxicants or drugs, which interferes with or prejudices the lawyer's services to the client.⁵

7. The Rule calls for conscientious, diligent and efficient service on the lawyer's part and he is therefore obliged to do his best to provide prompt service to his client. If and when the lawyer can reasonably foresee that his advice or services will be unduly delayed he should inform his client.⁶

8. It will be noted that the Rule does not provide a standard of perfection. A mistake even though it might be actionable for damages in negligence would not necessarily constitute a failure to maintain the standard set by the Rule, but evidence of gross neglect in a particular matter or a pattern of neglect or mistake in different matters may be evidence of such a failure regardless of tort liability. In the result, where both negligence and incompetence are established damages may be awarded for the former and the latter can give rise to the additional sanction of disciplinary action.⁷

9. The lawyer who is incompetent does his client a disservice, brings discredit on his profession and may bring the administration of justice into disrepute.⁸ In addition, he damages his own reputation and practice and may injure those who are associated with or dependent upon him.

NOTES

1. Cf. IBA B-1; ABA Canon 6, ECs 6-1 to 6-5, DR 6-101(A).
"The public looks for a hallmark bestowed by a trusted professional body, and evidenced by entry on a register or members' list. (p. 36)
... Having bestowed a hallmark of competence, a professional institute has some responsibility for ensuring that it remains valid." (p. 48) *Bennion*.
See also Bastedo, *A Note on Lawyers' Malpractice*, (1970) 7 Osg. Hall L.J. 311.
2. As a matter of law the English and Canadian courts have consistently held that actions by clients against their lawyers for breach of duty stem from the contracts of employment made or implicit on retainer.

or from the fiduciary relationship that exists between lawyer and client, and not on any general "tort" basis. A contractual or fiduciary relationship must be established. See, e.g. *Groom v. Crocker et al.* (1938) 2 All E.R. 394 (C.A.), *Rowswell v. Pettit et al.* (1968) 68 D.L.R. (2d) 202 (Ont. H.C.) at pp. 209-12 (affd. with variations as to damages by S.C.C. sub nom. *Wilson et al. v. Rowswell* (1970) S.C.R. 865.)

3. "Incompetence goes wider than lack of professional skill, and covers delay, neglect and even sheer disobedience to the client's instructions." *Bennion*, p. 53.
4. "This solicitor's very presence as a lawyer . . . is an assurance to the public that he has the training, the talent and the diligence to advise them about their legal rights and competently to aid in their enforcement. Having regard to the faith which a citizen ought to be able to place in a member of the Law Society . . ." per Porter J.A. in *Cook v. Scott et al.* (1968) 68 D.L.R. (2d) 723 at 726 (Alta. App. Div.).
5. Cf. *Orkin*, pp. 123-25, and para. 9, *post*.
 "A client has a right to honest explanations for delay on the part of his solicitor, and it is clear that the Benchers . . . concluded that the solicitor had not given an honest explanation for the delay, but on the contrary had deceived his client as to the reason for such delay . . ." per Farris C.J.S.C. in *Re Legal Professions Act; Sandberg v. "F"* (1945) 4 D.L.R. 446 at 447 (B.C. Visitation Tribunal).
 Cf. IBA D-1. In some jurisdictions (e.g. Ontario, "Law Society Act" R.S.O. 1970 c. 238 s. 35) provision is made for inquiry and suspension of members incapacitated by reason of age, physical or mental illness including addiction to alcohol or drugs, or other cause.
6. For a denunciation of dilatory practices of solicitors with observations *re*, see *Allen v. McAlpine et al.* (1968) 2 W.L.R. 366 (C.A.).
7. "I take the law as to the standard of care of a solicitor to be accurately stated in Charlesworth on Negligence . . .", . . . it must be shown that the error or ignorance was such that an ordinarily competent solicitor would not have made or shown it." per LeBel J. in *Aaroe & Aaroe v. Seymour* (1957) 6 D.L.R. (2d) 100 at 101 (Ont. H.C.).
 ". . . as a future guide to Benchers (this Visitation Tribunal) expresses the opinion that the words "good cause" in the *Legal Professions Act* are broad enough . . . to justify the Benchers in suspending a member . . . who has been guilty of a series of acts of gross negligence, which, taken together, would amount to a course of conduct sufficient to bring the legal profession into disrepute." per Farris C.J.S.C. in *Re Legal Professions Act; Baron v. "F"* (1945) 4 D.L.R. 525 at 528. (B.C. Visitation Tribunal).
8. For an instance of "inordinate and inexcusable delay" see *Tiesmaki v. Wilson* (1972) 23 D.L.R. (3d) 179 per Johnson J.A. at 182 (Alta. App. Div.).

CHAPTER III
Canadian Bar Association Code
Advising Clients

RULE

The lawyer must be both candid and honest when advising his client.¹

Commentary

1. The lawyer's duty to the client who seeks legal advice from him is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks as to the merits and probable results.²

2. Whenever it becomes apparent that the client has misunderstood or misconceived his position or what is really involved, the lawyer should explain as well as advise, so that the client is apprised of his true position and fairly advised with respect to the real issues or questions involved.³

3. The lawyer should clearly indicate upon what facts, circumstances and assumptions his opinion or advice is based, e.g. in cases where the circumstances do not justify an exhaustive investigation with the consequent expense to the client. However, unless the client instructs him otherwise, the lawyer should investigate the matter in sufficient detail to enable him to express an opinion rather than mere comments with many qualifications.

4. The lawyer should be wary of bold and confident assurances to his client, especially when his employment may depend upon his advising in a particular way.⁴

5. The lawyer should advise and encourage his client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and he should discourage his client from commencing useless legal proceedings.⁵

6. When advising his client the lawyer must never knowingly assist or encourage any dishonesty, fraud, crime or illegal conduct or instruct his client as to how to violate the law and avoid punishment. He should be on his guard against becoming the tool or dupe of an unscrupulous client or those who are associated with that client.⁶

7. A bona fide test case is not necessarily precluded by the preceding paragraph and so long as no injury to the person or violence is involved it is not improper for the lawyer to advise and represent a client who in good faith and on reasonable grounds desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.⁷

8. Apart altogether from the substantive law on the subject, it is improper for the lawyer to advise, incite or bring a criminal or quasi-criminal prosecution in order to secure some civil advantage for his client or to advise, seek or procure the withdrawal of a prosecution in consideration of the payment of money or transfer of property to or for the benefit of his client.⁸

9. In addition to his opinion as to the legal questions, the lawyer may be asked for or may be expected to give his views as

to non-legal matters such as the business, policy or social implications involved in the question or as to the course the client should choose. In many instances the lawyer's experience will be such that his views on non-legal matters will be of real benefit to his client. If the lawyer does express views on such matters, he should, where and to the extent necessary, point out that he lacks experience or other qualification in the particular field and he should clearly distinguish his legal advice from such other advice.⁹

10. The duty to give honest and candid advice requires the lawyer to inform the client promptly when the lawyer discovers that a mistake, which is or may be damaging to the client and which cannot readily be rectified, has been made in connection with a matter for which he is responsible. When so informing his client, the lawyer should be careful not to prejudice any rights of indemnity which he or his client may have under any insurance, client's protection or indemnity plan, or otherwise. At the same time the lawyer should recommend that his client obtain legal advice elsewhere as to any rights he may have arising from such mistake. The lawyer should also give prompt notice of any potential claim to his insurer or other indemnitor so that the client's protection from that source will not be prejudiced and, unless the client objects, assist and cooperate with the insurer or other indemnitor to the extent necessary to enable any claim which is made to be dealt with promptly. If the lawyer is not so indemnified, or to the extent that his indemnity may not fully cover the claim, he should expeditiously deal with any claim which may be made against him and he must not, under any circumstances, take any unfair advantage that would defeat or impair his client's claim. In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, the lawyer is under a duty to arrange for payment of the balance.¹⁰

NOTES

1. Cf. CBA 3(1); Que. 47(1)(3); IBA A-10; *Orkin* at pp. 78-79.
2. The lawyer should not remain silent when it is plain that his client is rushing into an "unwise, not to say disastrous adventure." See per Lord Danckwerts in *Neushal v. Mellish & Harkavy* (1967) 111 Sol. Jo. 399 (C.A.).
3. For cases illustrating the extent to which a lawyer should investigate and verify facts and premises before advising see, e.g., those collected in 43 E. & E.D. (Repl.) at pp. 97-115.
4. Cf. CBA 3(1) and Eaton, *Practicing Ethics* (1966) 9 Can. B.J. 349.
5. Cf. CBA 3(3) and *Orkin* at pp. 95-97. N.B. C-3: "The lawyer has a duty to discourage a client from commencing useless litigation; but the lawyer is not the judge of his client's case and if there is a reasonable prospect of success the lawyer is justified in proceeding to trial. To avoid needless expense it is the lawyer's duty to investigate and evaluate the proofs or evidence upon which the client relies before the institution of proceedings. Similarly, when possible the lawyer must encourage the client to compromise or settle the dispute."
"(the litigation process) operates to bring about a voluntary settlement of a large proportion of disputes . . . This fact of voluntary settlement is an essential feature of the judicial system." Jackett (C.J.F.C.C.), *The Federal Court of Canada, A Manual of Practice* (1971) at pp. 41-42.
6. Cf. CBA 3(5) ". . . the great trust of the lawyer is to be performed within and not without the bounds of the law." See also ABA DR 7-102(A).
Any complicity such as "abetting", "counselling" or being an "accessory" to a crime or fraud is obviously precluded.
Cf. ABA I.Cs 7-3 and 7-5: "Where the bounds of law are uncertain . . . the two roles (of advocate and adviser) are essentially different.

In asserting a position on behalf of his client, an *advocate* for the most part *deals with past conduct* and must take the facts as he finds them. By contrast a lawyer serving as *adviser* primarily *assists his client in determining the course of future conduct* and relationships . . . A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment . . .” (Emphasis added).

“The arms which (the lawyer) wields are to be the arms of the warrior and not of the assassin. It is his duty to accomplish the interests of his clients *per fas* but not *per nefas*.” *per Cockburn L.C.J.*, in a speech in 1864 quoted as being derived from Quintilian in Rogers, *The Ethics of Advocacy* (1899) 15 L.Q.R. 259 at 270-71. Applied to a solicitor in a “very clear case where the solicitor has been guilty of misconduct” and is “floundering in a quagmire of ignorance and moral obliquity” (he having pending trial of an action, in anticipation of an adverse outcome, advised his client to dispose of its property and, after verdict, taken an assignment of part of that property). *Centre Star v. Rossland Miners Union* (1904-05) 11 B.C.R. 194 at 202-03 (B.C. Full Ct.).

7. For example, to challenge the jurisdiction for or the applicability of a shop-closing by-law or a licencing measure, or to determine the rights of a class or group having some common interest.
8. See article, *Criminal Law May Not Be Used to Collect Civil Debts* (1968) vol. II No. 4 Law Soc. U.C. Gaz. 36. And cf. B.C. E-5; Alta 41; ABA DR 7-105(A).
9. Epitome from Johnstone & Hopson, *Lawyers and Their Work* (1967), Bobbs-Merrill, Indianapolis (a U.K.-U.S. comparison), pp. 78-81: The lawyer’s advice is usually largely based on his conception of relevant legal doctrine and its bearing on the particular factual situation at hand. Anticipated reactions of courts, probative value of evidence, desires and resources of clients, and alternative courses of action are likely to have been considered and referred to. He may indicate his preference and argue persuasively, or pose available alternatives in neutral terms. He makes the law and legal processes meaningful to clients; he explains legal doctrine and practices and their implications; he interprets both doctrine and impact. Often legal and nonlegal issues are intertwined. Much turns on whether the client wants a servant, a critic, a sounding board, a neutral evaluator of ideas, reassurance, authority to strengthen his hand . . . The real problem may be one, not of role conflict, but of role definition. The lawyer may spot problems of which the client is unaware and call them to his attention.
10. See Bastedo, *A Note on Lawyers’ Malpractice* (1970) 7 Osg. Hall L.J. 311.

CHAPTER XIV
Canadian Bar Association Code
Responsibility to the Profession Generally

RULE

The lawyer should assist in maintaining the integrity of the profession and should participate in its activities.¹

Commentary

1. Unless a lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to his clients or others may ensue. Evidence of minor breaches may on investigation disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is therefore proper (unless it be privileged or otherwise unlawful) for a lawyer to report to his Governing Body any instance involving or appearing to involve a breach of this Code. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a consequence of an apparent breach, for example where a shortage of trust funds is involved, the lawyer has an obligation to the profession to report the matter unless it is privileged or otherwise unlawful for him to do so. In all cases the report must be made bona fide without malice or ulterior motive.²
2. The lawyer has a duty to reply promptly to any communication from his Governing Body.³
3. The lawyer should not write, in the course of his practice, letters, whether to his client, another lawyer or any other person, which are abusive, offensive or otherwise totally inconsistent with the proper tone of a professional communication from a lawyer.⁴
4. There should be no discrimination by the lawyer on the grounds of race, creed, colour, national origin or sex in the employment of other lawyers or articulated students or in other relations between him or her and other members of the profession.⁵
5. In order to enable the profession to discharge its public responsibility to provide independent and competent legal services, the individual lawyer should do his part in assisting the profession to function properly and effectively. In this regard, participation in such activities as law reform, continuing legal education, tutorials, legal aid programmes, community legal service, professional conduct and discipline, liaison with other professions, and other activities of the Governing Body or local, provincial or national associations, although often time-consuming and without tangible reward, are essential to the maintenance of a strong, independent and useful profession.⁶

NOTES

1. Cf. CBA 5(1); Que. 29(1); ABA Canon 1.
"The legal profession . . . has emerged over the centuries in order to fill a pressing public need for protection . . . under the law of the rights and liberties of the individual, however humble, if necessary against the state itself." (IBA, Introductory).
"Public confidence in the profession would be shaken if such conduct were tolerated . . . no solicitor could escape (striking-off) simply by showing that there had been no dishonesty and no concealment, and that no client had suffered . . ." per Parker L.C.J. in *In re a Solicitor* (1959) 193 Sol. Jour. 875 (Q.B.D.).

2. Cf. CBA 5(1); Que. 36(2); Ont. 33; B.C. F-3; ABA DR 1-103, EC 1-4. Alta. 22: "It is conduct unbecoming . . . not to (report instances) when they clearly involve a shortage of trust funds or a breach of an undertaking."
3. Cf. Que. 41, 42; Ont. 20; Alta. 18; N.B. D-1; Sask. 12. "The reprehensible thing about the solicitor's conduct is his indefensible ignoring of the communications of the Law Society . . ." per Walsh J. in *In re X., a Solicitor* (1920) 16 Alta. L.R. 542 at 543.
4. Cf. IBA D-6.
5. Reflecting the public policy declared by the *Canadian Bill of Rights* and the similar legislation of the various provinces. See Ont. 36, enacted in 1974.
6. Cf. ABA EC 1-4, 2-25, 6-2, 8-1, 8-2, 8-3, 8-9, 9-6.

APPENDIX II - ACCOUNTING - I.C.A.O.

The Chartered Accountants Act, R.S.O. 1937, c. 235
(excerpts)

- 8**
By-laws (1) The council may from time to time pass by-laws to carry out the objects of the Institute and, without limiting the generality of the foregoing, the council may from time to time pass by-laws,
- (a) to prescribe standards and tests of competency, fitness and moral character, for the registration of students-in-accounts and for membership in the Institute;
 - (b) to prescribe fees payable to the Institute;
 - (c) to provide for the establishment and maintenance of classes, lectures, courses of study, systems of training, periods of service and examinations;
 - (d) to provide for the receipt, management and investment of contributions, donations and bequests from members and others for the benefit of needy members, their families and the families of deceased members or for scholarships and prizes and for contributions from the funds of the Institute for these purposes;
 - (e) to provide for the exercise of disciplinary authority over members and students-in-accounts of the Institute by expulsion, suspension or the imposition of any other penalty after due inquiry;
 - (f) to provide for rules of professional conduct;
 - (g) to provide for affiliation with any university or college or with any corporation or association having similar or related objects. R.S.O. 1937, c. 235, ss. 2(2), 9, 12, 18, *amended*.
- Idem** (2) No such by-law or any amendment thereto shall take effect until it has been approved at an annual meeting of the members of the Institute or at a general meeting of the members of the Institute called to consider such by-law or amendment.
- Annulment** (3) Any such by-law may be annulled by the Lieutenant-Governor in Council. R.S.O. 1937, c. 235, s. 8 (1, 2).

Institute of Chartered Accountants of Ontario
By-laws (excerpts)

- 16 (1) Upon receipt by the council of the proof provided for under clause (2) any member who

(a) becomes a bankrupt, or

(b) is declared by a Court to be a mentally incompetent person pursuant to the *Mental Incompetency Act*, R.S.O. 1970, c. 271, or other statute for the time being in force, or has been certified incompetent to manage his estate or has appointed the Public Trustee as committee of his estate pursuant to the *Mental Health Act*, R.S.O. 1970, c. 269, or other statute for the time being in force, or

(c) is admitted as or becomes an involuntary patient in a psychiatric facility or continues therein by virtue of a certificate of renewal, pursuant to the *Mental Health Act*, R.S.O. 1970, c. 269, or other statute for the time being in force,

is thereupon suspended from membership in the Institute.

- (2) For the purposes of clause (1), the following may be given as conclusive proof of the facts certified, evidenced or declared:

(a) in the case of a bankrupt, a certified copy of the receiving order or a certificate of the official receiver certifying that the person is a bankrupt;

(b) in the case of a mentally incompetent person a certified copy of the final court order declaring the person to be mentally incompetent or in the case of a person certificated to be incompetent to manage his estate a certified copy of such certificate of incompetence or other written evidence from the Public Trustee as his statutory or appointed committee that the person is incompetent to manage his estate;

(c) in the case of a person who is an involuntary patient in a psychiatric facility, written evidence from an appropriate authorized individual in such psychiatric facility stating that the person has been involuntarily admitted to or has become an involuntary patient in the psychiatric facility or continues therein as an involuntary patient.

- (3) Any person suspended by operation of clause (1) shall forthwith be given written notice of such suspension and in the case of a person to whom clause (1)(b) or (c) applies, similar notice shall also be given to that person's legal representative, if any.

(4) Any person whose membership is suspended by operation of clause (1), may, whether or not the condition giving rise to the suspension has been removed, apply to have the suspension terminated; any such application shall be investigated by the professional conduct committee and, after investigation, the professional conduct committee shall, subject to clause 5 hereof, report its findings to the council concerning the matter.

(5) A person applying pursuant to clause (4) hereof, shall be given prompt written notice of the findings of the professional conduct committee, and in the case of a person to whom clause (1)(b) or (c) applies, similar notice shall also be given to that person's legal representative if any; if such person is not satisfied with the findings he may apply to have the matter reviewed by the appeal committee, before the findings are laid before the council, pursuant to By-law 57.

(6) In arriving at its findings the professional conduct committee, or in reviewing any findings the appeal committee, shall have regard to such considerations as may seem appropriate including whether the applicant,

(a) is of good moral character, and

(b) has been discharged from bankruptcy as evidenced by a Court order to that effect, or

(c) has been declared by a court to have become mentally competent or capable of managing his own affairs as evidenced by a court order to that effect or has become competent to manage his estate as evidenced by Notice of Cancellation of the Certificate of Incompetence pursuant to the *Mental Health Act*, R.S.O. 1970, c. 269 or other statute for the time being in force, or written evidence to that effect from the Public Trustee, as may be appropriate, or

(d) has sufficiently recovered and has been discharged from a psychiatric facility as evidenced by a certificate or other written evidence to that effect from an appropriate authorized individual in such psychiatric facility.

(7) Any member or student who becomes bankrupt shall advise the Institute of the fact as soon as practicable, but no later than ten days after the event."

51 * (1) The council may from time to time appoint such committees from the members as it may deem necessary or desirable and subject to these by-laws may in particular cases appoint non-members to committees provided that at all times a majority of the members and the chairman of any committee shall be members of the Institute.

(2) The president, the vice-president (or vice-presidents), the secretary and the treasurer (or secretary-treasurer) shall be ex officio members of all committees of the Institute, except the professional conduct committee, the discipline committee, the appeal committee, local committees or associations and such other committees as the council may from time to time determine.

(3) Except where otherwise specially provided, meetings of committees shall be held, on reasonable notice, at such times and places as the respective chairmen thereof shall from time to time determine.

* (4) Except where otherwise specially provided, at any meeting of a committee three members of the committee shall constitute a quorum provided that at any such meeting a majority of the members of the committee present and voting shall be members of the Institute.

* (5) Subject to clause (4) hereof, every member of a committee present shall have a vote and the chairman shall in addition have a casting vote.

52* Subject to these by-laws, the council annually shall select and appoint the members of the following committees:

(a) the applications committee;

(b) the education committee;

(c) the professional conduct committee;

(d) the discipline committee;

(e) the appeal committee.

55 The professional conduct committee shall be responsible for the supervision and regulation of the professional conduct and good standing of all members and students and shall have the powers in disciplinary matters set forth in By-law 79; ~~the committee shall have power also to act on behalf of the council in investigating any application for termination of a suspension under By-law 16.~~

56 The discipline committee shall conduct the formal hearing of all charges referred or addressed to it under these by-laws.

57 (1) The appeal committee shall;

(a) hear any appeals from findings and orders of the discipline committee under these by-laws;

(b) act on behalf of the council in reviewing any findings on an application for admission to membership, under By-law 63(1)(b), where notice requesting review of such findings has been given pursuant to clause (2) hereof;

(c) act on behalf of the council in reviewing any findings on an application for termination of a suspension, under By-law 16, where notice requesting review has been given pursuant to clause (2) hereof;

and shall report its decision in any such matter, promptly to the council.

(2) In connection with any review proceeding before the appeal committee under clause (1)(b) or (c) hereof, the following provisions shall apply;

(a) written notice requesting review shall be given by the party affected by registered mail addressed to the Office of the Institute in Toronto within ten days of the date of the mailing of the notice of the findings concerned;

(b) the procedural rules set forth in By-laws 87 (b), (d), (e), (f), (g), (h), (l), (t), (u), (w), (x), (y), (aa), (ab), (ac), 88 and 90, shall apply *mutatis mutandis* to such proceedings and shall be read and construed accordingly, and the proceedings shall be recorded in shorthand or otherwise;

(c) notwithstanding any other provision of these by-laws, but subject always to the provisions of *The Statutory Powers Procedure Act*, 1971 and of *The Chartered Accountants Act*, 1956, the appeal committee may, in particular cases, proceed in such manner and make such dispositions as the nature of the case and natural justice may require;

(d) where the good character, propriety of conduct or competence of the party affected is in issue in the review proceedings, the professional conduct committee or the applications committee, as the case may be, shall furnish him with reasonable information of any allegations with respect thereto prior to the hearing;

(e) the appeal committee shall send forthwith to the party affected by first class mail addressed to such person at his address last known to it, a copy of its disposition in the review proceedings, together with the reasons therefor, where reasons have been given."

57 The appeal committee shall hear any appeals from findings and orders of the discipline committee under these by-laws.

76 (1) The council may from time to time pass rules of professional conduct prescribing the standards of fitness, moral character and conduct of members and students, but no such rule or any amendment thereto shall take effect until it has been approved at an annual general meeting of the Institute or at a general meeting of the Institute called to consider such rule or amendment.

(2) Members and students shall comply with such standards as prescribed, and with the by-laws, rules and regulations of the Institute.

(3) Notwithstanding the terms of the rules of professional conduct, the council shall have the additional right and power to determine from time to time in particular cases, what acts, omissions, matters or things constitute unfitness, lack of moral character, or professional or other misconduct in members and students, or constitute violations of the by-laws, rules and regulations of the Institute or are or have been derogatory to the reputation, dignity or honour of the Institute or the profession.

77 The disciplinary work of the Institute shall be carried on by the professional conduct committee, the discipline committee, the appeal committee and the council in accordance with the by-laws, provided that the council may from time to time make rules and regulations for the conduct of the work of these three committees.

Professional Conduct Committee

78 The professional conduct committee shall consist of such members, including a chairman and one or more deputy chairmen, as may be appointed by the council; it may sit and effectively act in two or more divisions at the same time provided that notice has been given to its members and that a quorum of three is present in each division.

79 (1) The professional conduct committee shall be responsible for the initiation of the disciplinary work of the Institute and in the execution of its duties shall have power:

(a) to receive in writing from any person a charge or complaint of professional misconduct by any member or student;

(b) to receive in writing from any member a charge or complaint of unfitness, lack of moral character or professional or other misconduct of any member or student;

(c) to make such preliminary investigation and enquiry as it deems proper into any such charge or complaint or into any act, omission, matter or thing which may constitute or involve unfitness, lack of moral character, or professional or other misconduct in any member or student, or which may constitute or involve violations of the by-laws, rules and regulations of the Institute or which may be or may have been derogatory to the reputation, dignity or honour of the Institute or the profession;

(d) to make a charge in the committee's absolute discretion;

(e) to take whatever action it deems proper in connection with any charge or complaint including referring any such charge to the discipline committee;

* (f) to require the attendance of any member or student and the production of any books, documents and working or other papers in their possession, custody or control which may be required from time to time;

(g) to retain the services of any person on a fee basis, whether or not a member, to authorize any such person to enquire into all matters which may be brought to his attention by the committee or its chairman, and through its chairman to authorize any such person to inter-

view any member or student and to examine any books, documents and working or other papers;

(h) to determine the time and place of its meetings and the procedure thereat and from time to time to do and decide all such other matters as may be necessary for the work of the committee;

(i) to admonish informally members or students whether charged or not under these by-laws.

* (2) Notwithstanding any other provision of these by-laws the professional conduct committee may appeal against any finding or order made by the discipline committee under by-law 80(4) or by the appeal committee under by-law 82(8).

* (3) Any appeal pursuant to this by-law shall be commenced by the professional conduct committee giving written notice thereof to the party or parties to the proceedings and filing a copy of such notice with the appeal committee or with the council, as the case may be.

* (4) Any notice of appeal given under this by-law shall set forth the grounds and purposes of the appeal and shall state what variation, if any, is sought in any finding or order against which the appeal is taken and, except by leave of the body hearing the appeal and upon application duly made in accordance with provisions of these by-laws, no ground of appeal may be put forth and no variation sought at the hearing which is not included in the notice of appeal.

* (5) The provisions in by-law 80(7); by-law 81; by-law 82(2), (4), (6), (8), (9) and (10); by-law 83(1), (3), (5), (6) and (7); by-law 87(b), (d), (e), (g) to (l) both inclusive, (o), (p), (q), (s), (u), (w) and (z); and by-laws 89 and 90 shall apply *mutatis mutandis* to the professional conduct committee as well as to the person charged in any appeal taken pursuant to this by-law and such provisions shall be read and construed accordingly.

Discipline Committee

80

(1) The discipline committee shall consist of such members, including a chairman and one or more deputy chairmen, as may be appointed by the council, of whom three shall constitute a quorum; it may sit and effectively act in two or more divisions at the same time provided that notice has been given to its members and that a quorum of three is present in each division.

(2) In any case where the professional conduct committee refers or makes a charge to the discipline committee, the discipline committee shall promptly give notice of the time appointed for a formal hearing.

(3) The procedure before and at such formal hearing shall be in accordance with the provisions of by-law 87.

(4) If after a formal hearing the discipline committee finds any member or student guilty of a charge, it may order one or more of the following, namely:

(a) that any such member or student shall be reprimanded by the chairman or a deputy chairman of the discipline committee or disciplined in such other way as the committee may from time to time determine;

(b) that any such member or student shall pay a fine to the Institute or, if such fine should not be paid within ten days, that the member or student shall be dealt with under this by-law in such manner, including suspension or expulsion, as the committee may by resolution from time to time determine;

(c) that any such member or student shall be suspended from any or all of his rights and privileges as such under the Act and the by-laws on such terms and conditions as the committee may from time to time determine either for a time certain or until the committee shall further order;

(d) that any such student shall be struck off the register of students;

(e) that any such member shall be expelled from membership in the Institute;

or it may recommend to the council that any such member or student be permitted to resign.

(5) The discipline committee may accept as conclusive proof of the facts certified the following:

(a) in the case of a convicted person the certificate of conviction signed by the Clerk of the Court or other officer having custody of the records in which the conviction was had or returned; and

(b) in the case of the revocation or suspension of a licence under The Public Accountancy Act a certificate of the secretary or the registrar of The Public Accountants Council for the Province of Ontario of any action taken by any lawful authority with regard to a licence.

(6) The discipline committee shall have power during or after a formal hearing to admonish informally members or students whether found guilty or not.

* (7) (a) The discipline committee shall report forthwith to the professional conduct committee the disposition of every charge referred or made to it.

(b) The discipline committee shall report to the council the disposition of every charge referred or made to it.

81

(1) Notice of any order made by the discipline committee may be given in such form and manner as the discipline committee may from time to time determine and notice of any order of expulsion or suspension of a member shall be given to all members of the Institute after a period of fifteen days from the date of the making of the order.

(2) Notice of any order made by the discipline committee may, at its discretion, be published in *The Canadian Chartered Accountant* and such publication shall be deemed adequate notice to all members under clause (1) of this by-law.

(3) Such further or other notice of any order made by the discipline committee under by-law 80 may be given or published in such a way and at such times as the discipline committee or the council may determine.

* (4) The provisions of this by-law shall apply *mutatis mutandis* to notice or publication of any order made by the appeal committee under the provisions of by-law 82 or by the council under the provisions of by-law 83, provided that upon the giving of any notice of appeal or of final appeal or of any notice of a proceeding in a court by way of review or appeal, as the case may be, the terms of any order and the operation of this by-law as to notice and publication shall be stayed pending the disposition of any such appeal or final appeal or proceeding unless otherwise ordered by the appeal committee, the council or a court, as the case may be, in accordance with the provisions of Section 25(1) of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force.

(5) All members and students, by their applications for membership or registration or by their continuance of membership or registration, shall consent and be deemed to have consented to any notice or publication under this by-law and by-laws 82 and 83.

Appeal Committee

82

(1) The appeal committee shall consist of such members of the council, including a chairman, as may be appointed by the council.

(2) Any member or student found guilty of any charge by the discipline committee may appeal against any finding or any order under by-law 80(4) by giving written notice of appeal to the appeal committee by registered letter addressed to the office of the Institute in Toronto and by filing a bond satisfactory to the chairman of the appeal committee not later than ten days from the date of the making of any such finding or order, excluding such date but including the day of mailing, and

unless notice of appeal is given and the bond filed as required by this by-law, the findings and orders of the discipline committee in any particular case shall be final, binding and conclusive for all purposes.

(3) Any notice of appeal given under the provisions of this by-law shall, in the manner required by the provisions of by-law 87(n), set forth the grounds of appeal and shall state the relief asked.

(4) When a notice of appeal is duly given, the appeal committee shall promptly give notice of the time appointed for a hearing of the appeal.

(5) *Repealed, June 12, 1972.*

(6) If, at the time appointed for the hearing of any appeal, the person appealing appears, the appeal committee shall proceed on the basis set forth in the notice of appeal.

(7) The procedure before and at any appeal under this by-law shall be in accordance with the provisions of by-law 87.

(8) The appeal committee shall have power by order to confirm, reject or change the findings and any orders of the discipline committee made under these by-laws including those relating to publication.

(9) The findings and orders of the appeal committee in any particular case shall be final, binding and conclusive for all purposes unless a final appeal to the council is provided for in these by-laws and is taken.

• (10) The appeal committee shall report forthwith to the professional conduct committee the disposition of every appeal taken to it.

Council — Final Appeal

83

(1) In every case where the appeal committee confirms or makes an order suspending a member or student or striking a student from the register or expelling a member, the person thus suspended, struck from the register or expelled may appeal against such order and the finding on which it is based by giving written notice of final appeal to the council by registered letter addressed to the office of the Institute in Toronto and by filing a second bond satisfactory to the president, not later than ten days from the date of the making of the order of the appeal committee, excluding such date but including the day of mailing.

(2) Any notice of final appeal given under the provisions of this by-law shall, in the manner required by the provisions of by-law 87(n), set forth the grounds of final appeal and shall state the relief asked.

(3) When notice of final appeal is duly given, the president shall convene a special meeting of the council to hear the final appeal and the Institute shall promptly give notice of the time appointed for such hearing.

(4) *Repealed, June 12, 1972.*

(5) If, at the time appointed for the hearing of the final appeal, the person appealing appears, the council shall either hear the appeal on the basis set forth in the notice of final appeal or, in its discretion, proceed by way of a new formal hearing provided there is a request to do so in the notice of final appeal.

(6) In any final appeal, the council shall have power to confirm, reject or change the findings and orders of the discipline committee and the appeal committee and to make any order which, in its discretion, the nature of the case or natural justice may require.

(7) The decisions, findings and orders of the council in any final appeal shall be final, binding and conclusive for all purposes.

87*

In connection with any formal hearing by the discipline committee or with any appeal to or other hearing by the appeal committee or the council, the following rules of procedure shall apply:

(a) any person charged shall be entitled to ten days notice of the time and place appointed for any formal hearing of the charge (excluding the day of mailing and the day of hearing) together with a copy of the charge, addressed to him at his last known address shown in the records of the Institute;

(b) any person appealing to the appeal committee or to the council shall be entitled to ten days notice of the time and place appointed for the hearing of the appeal or of the final appeal (excluding the day of

mailing and the day of hearing) addressed to him at his last known address shown in the records of the Institute;

(e) in any case where the appeal committee or the council proceeds by way of a new formal hearing, no further notice of the new formal hearing shall be required and the appeal committee or the council may thereupon proceed with such hearing;

(d) any person charged or appealing shall attend at the time and place appointed for the hearing of the charge or of the appeal; if the person charged or appealing does not attend the formal hearing, the appeal or the final appeal, the discipline committee or the appeal committee or the council, as the case may be, may proceed in his absence and he will not be entitled to any further notice in the proceedings;

(e) at any formal hearing of a charge, the person charged shall be entitled to be represented by legal counsel or other agent, to be present during the hearing, to question any witnesses either personally, by counsel or such other agent, and to submit statements, evidence and argument; and at any appeal or final appeal, not involving a new formal hearing, any person appealing shall be entitled to be represented by legal counsel or other agent, to be present during the hearing and to submit argument;

(f) the discipline committee, the appeal committee or the council may require the attendance before it of any member or student and the production of any books, documents and working or other papers;

(g) unless it be otherwise specially provided, the procedure at all formal hearings and appeals shall be determined by the ruling of the chairman, whose decision shall be final, binding and conclusive;

(h) a formal hearing or the hearing of any appeal may be adjourned at any time and from time to time and no further notice shall be required;

(i) the proceedings at any formal hearing or at any appeal from which a final appeal may be taken shall be recorded in shorthand or otherwise and where an appeal or final appeal is taken under the by-laws the party appealing shall, subject to clause (j) hereof, request, pay for and file a complete transcript of the proceedings, and that transcript shall be conclusive evidence of the proceedings for the purposes of the appeal or final appeal;

(j) in any appeal or final appeal, and upon application made on notice to all parties not later than 15 days from the date of the filing of the notice of appeal or of final appeal, the chairman of the appeal committee or of the council as the case may be, may, in his absolute discretion, dispense with the requirement of filing a complete transcript as provided in clause (i) hereof and may order instead that the party appealing file only those portions of the transcript as bear upon the grounds set forth in the notice of appeal or notice of final appeal;

(k) if more than one member or student be involved in any charge or if there be more than one charge, the formal hearing or appeal may proceed as to each charge or member or student separately or together as the chairman may from time to time determine;

(l) in any formal hearing the discipline committee, the appeal committee or the council, as the case may be, may administer oaths and affirmations for the purpose of any of its proceedings and may require evidence before it to be given under oath or affirmation;

(m) the discipline committee, the appeal committee and the council, as the case may be, shall have power to charge the costs of any formal hearing, appeal or final appeal to the member or student;

(n) any notice of appeal or final appeal given under the provisions of these by-laws shall set forth the particular grounds of appeal, shall state the particular relief asked and, further, whether the relief asked is

(i) a review of and change in any finding on which the order was based, in which case the finding and the change requested shall be set forth in the notice,

(ii) the setting aside of or a change in the whole or any term of the order and, in the latter case, any such term of the order shall be set forth in the notice,

(iii) a new formal hearing of the whole or a particular aspect of the charge by the body hearing the appeal or final appeal and, in the latter case, any such particular aspect of the charge shall be set forth in the notice,

and, except by leave of the body hearing the appeal or the final appeal and upon application duly made in accordance with the provisions of these by-laws, no ground of appeal may be put forth and no relief may be asked at the hearing which is not included in the notice of appeal or of final appeal;

(o) any notice of appeal or of final appeal may be amended at the hearing with leave of the appeal committee or of the council as the case may be, provided notice of application for amendment setting out the amendment has been given to the office of the Institute at Toronto at least five days prior to the date appointed for the hearing of the appeal or final appeal;

(p) where the body hearing the appeal or final appeal allows an amendment under the foregoing provision of this by-law, any reference in these by-laws to a "notice of appeal" or to a "notice of final appeal" thereafter shall mean the notice of appeal or the notice of final appeal as amended;

(q) notwithstanding any other provision of these by-laws, the appeal committee and the council may, in particular cases, proceed in such manner and grant such relief as the nature of the case or natural justice may require;

(r) where there is a variance between the wording of a charge and the evidence presented in support thereof, and where, in the opinion of the discipline committee, the member or student has not been prejudiced by lack of notice, the discipline committee may direct an amendment of the charge so as to make it conform to the evidence and proceed with the hearing of the charge, but where, in the opinion of the discipline committee, the member or student may be prejudiced by such amendment, the discipline committee may, if it is of the opinion that such prejudice can be removed by an adjournment, make such amendment and adjourn the hearing of the charge to a later date; this provision shall also apply to a new formal hearing in accordance with the provisions of these by-laws and shall be read and construed accordingly;

(s) the discipline committee, the appeal committee or the council, as the case may be, shall send to the person charged or appealing, by first-class mail addressed to such person at his address last known to it, a copy of its final decision and order, if any, in the proceedings, together with the reasons therefor, where reasons have been given, and such party shall be deemed to have received a copy of the decision or order on the fifth day after the day of mailing unless he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the copy of the decision or order until a later date, and accordingly that the time limited by by-law 81(1) as to notice or publication of any order, and by by-law 82(2) and by-law 83(1) as to the giving of notice of appeal or of any final appeal, shall be deemed to commence on the fifth day following the date of mailing by first-class mail in accordance with the provisions of this paragraph, provided that in lieu of mailing as aforesaid, a copy of the decision or order, if any, together with the reasons therefor, where reasons have been given, may be personally served upon such party and in such cases the time limited by by-law 81(1) as to notice or publication of any order, and by-law 82(2) and by-law 83(1) as to the giving of notice of appeal or of any final appeal, shall commence on the day next following the day on which such personal service is effected;

(t) in any formal hearing the discipline committee, the appeal committee or the council, as the case may be, may require any person,

including the person charged, by summons issued pursuant to Section 12 of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force, to give evidence on oath or affirmation at that formal hearing, and to produce in evidence at such hearing the documents and things specified in the summons by the body issuing it, provided that such evidence, documents and things are relevant to the subject matter of the proceedings and are admissible at the formal hearing:

^a (u) the discipline committee, the appeal committee, or the council, as the case may be, shall give its final decision and order, if any, in any proceedings in writing and shall give reasons in writing therefor if so requested by a party;

(v) where the good character, propriety of conduct or competence of the person charged is in issue in any formal hearing, the professional conduct committee shall furnish such person with reasonable information of any allegations with respect thereto prior to the hearing;

(w) the discipline committee, or the appeal committee or the council, as the case may be, may

(i) make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes,

(ii) reasonably limit further cross-examination of a witness where it is satisfied that the cross-examination of the witness has been sufficient to disclose fully and fairly the facts in relation to which he has given evidence,

(iii) exclude from a hearing anyone, other than a barrister and solicitor qualified to practise in Ontario, appearing as an agent on behalf of a party or as an adviser to a witness if it finds that such person is not competent properly to represent or to advise the party or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser,

(iv) make such orders and give such directions as it considers necessary for the maintenance of order and such orders or directions may be enforced in the manner provided in Section 9(2) of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force;

(x) in any formal hearing by the discipline committee, the appeal committee or the council, as the case may be:

(i) a witness may be advised by his counsel or agent as to his rights but such counsel or agent may take no other part in such hearing without leave of the body holding such hearing; and

(ii) where such a hearing is *in camera* a counsel or agent for a witness shall not be entitled to be present except when that witness is giving evidence;

(y) in any formal hearing the discipline committee, the appeal committee or the council, as the case may be, may:

(i) to the extent permitted by Section 15 of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force, admit as evidence whether or not given or proven under oath or affirmation or admissible as evidence in a court, any oral testimony and any document or other thing relevant to the subject matter of the proceedings and may act on such evidence, but may exclude anything unduly repetitious;

(ii) admit a copy of a document or other thing as evidence where it is satisfied as to the authenticity thereof;

(iii) grant leave to the person producing or to the person entitled to a document that has been filed in evidence to cause, or to itself cause, such document to be photocopied and it may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing

it or the person entitled to it a photocopy of the document filed, certified by a member of the discipline committee, the appeal committee or the council, as the case may be;

(z) a member of the discipline committee who has participated in the hearing of a charge by the discipline committee shall not participate in the hearing of any appeal, final appeal or new formal hearing in the same matter, and a member of the council who has participated in the hearing of an appeal or in a new formal hearing by the appeal committee shall not participate in the hearing of any final appeal or in a further new formal hearing in the same matter;

(aa) the members of the discipline committee, the appeal committee or the council, as the case may be, who are assigned to render a decision after any formal hearing or any appeal shall not have taken part prior to such formal hearing or appeal in any investigation or consideration of the subject matter of such formal hearing or appeal and shall not communicate directly or indirectly in relation to the subject matter of such formal hearing or appeal with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make a submission as to the law;

(ab) no member of the discipline committee, the appeal committee or the council, as the case may be, shall participate in a decision pursuant to any formal hearing or appeal who was not present throughout such hearing or appeal and heard the evidence and argument of the parties, and, except with the consent of the parties, no decision pursuant to the hearing shall be reached unless all members so present participate in the decision;

(ac) in any formal hearing the findings of fact shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*, or other provision or statute for the time being in force.

- 88*** The discipline committee, the appeal committee or the council, as the case may be, may, in making its decision in any proceedings,
- (a) take notice of facts that may be judicially noticed; and
 - (b) take notice of any generally recognized scientific or technical facts, information, or opinions within its scientific or specialized knowledge.

- 90*** Any formal hearing shall be open to the public except where the discipline committee, the appeal committee or the council, as the case may be, is of the opinion that,
- (a) matters involving public security may be disclosed; or
 - (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,
- in which case the discipline committee, the appeal committee or the council, as the case may be, may hold the hearing concerning such matters *in camera*.

ICAO Rules of Professional Conduct (excerpts)

The rules of professional conduct, as a whole, flow from the special obligations embraced by the chartered accountant. The reliance of the public, generally, and the business community, in particular, on sound and fair financial reporting and competent advice on business affairs — and the economic importance of that reporting and advice — impose these special obligations on the profession. They also establish, firmly, its social usefulness.

The rules and the related Interpretations of Council centre about a number of principles — fundamental statements of accepted conduct whose soundness is, for the most part, self-evident.

These principles are:

- *A member or student shall conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.*
- *A member or student shall perform his professional services with integrity and care and accept an obligation to sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards.*
- *A member who is engaged to express an opinion on financial statements shall hold himself free of any influence, interest or relationship, in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.*
- *A member or student has a duty of confidence in respect of the affairs of any client and shall not disclose, without proper cause, any information obtained in the course of his duties, nor shall he in any way exploit such information to his advantage.*
- *The development of a member's practice shall be founded upon a reputation for professional excellence, and the use of methods commonly characterized as self-promotion or solicitation is not in keeping with this principle.*
- *A member shall act in relation to any other member with the courtesy and consideration due between professional colleagues and which, in turn, he would wish to be accorded by the other member.*

* * *

A number of the principles need not be expounded upon — those which concern: upholding the honour and good reputation of the profession; the performance of professional services with integrity and care; the duty of confidence; and the duty to act with courtesy and consideration toward professional colleagues.

Some aspects of the principles and of the rules derived from them do, however, warrant discussion:

- the sustaining of professional competence;
- the duty to avoid conflicts of interest in respect of a client's affairs; and
- the development of a practice by establishing a good reputation rather than by self-promotion or solicitation.

It is apparent that the more sophisticated and complex society becomes, the greater the demands it makes of its institutions, including its professions. Society's expectations of the accounting profession — particularly in its financial reporting roles and its business advisory services — will, therefore, continue to rise. This underscores the need, expressed in the statement of principles, for sustaining individual professional competence by keeping abreast of and complying with developments in professional standards.

It makes imperative, too, the duty that the chartered accountant bring, and be seen to bring, the qualities of objectivity and integrity to his professional services. It thus becomes a cardinal position of a member of the profession that he will not subordinate his professional judgment to the will of others, and that he expresses his conclusions honestly and impartially.

In this respect, clearly, chartered accountants cannot practise their profession and participate in the affairs of their community without being exposed to circumstances that may place pressures upon their objectivity and integrity, and it would be impractical to impose detailed proscriptions intended to cover all conceivable situations. To do so on a rigid basis would be to inhibit the rendering of useful services even when the likelihood of impairment of the chartered accountant's objectivity was relatively remote.

While it may be difficult for a chartered accountant always to appear completely free of any disabling influence, interest or relationship in respect of his client's affairs, pressures upon his objectivity or integrity are subject to powerful countervailing forces and restraints — his liability in law, his responsibility to his profession for his professional actions and, perhaps most importantly, the inbred resistance of a disciplined professional person to any infringement upon his basic impartiality and integrity in the rendering of services.

Since, however, the public must be assured of the chartered accountant's freedom from any conflict of interest, the profession tests its existence against the criterion of whether a reasonable man, having knowledge of all the facts and taking into consideration normal strength of character and normal behaviour under the particular circumstances, would conclude that a specified relationship between a chartered accountant and a client posed an unacceptable threat to the chartered accountant's independence of judgment. Only thus can public confidence in the objectivity and integrity of the chartered accountant be sustained, and it is upon this public confidence that the reputation and usefulness of the profession rest.

Turning to the matter of building a practice — strictures against advertising, against publicly claiming special skills above those possessed by colleagues with equal qualifications, and against solicitation for engagements, are readily understood by a member of a profession. He regards these acts, almost instinctively, as the very antithesis of professionalism — a scrambling for clientele inappropriate to an essentially intellectual calling which emphasizes quality of service. So, too, with responding to calls for tenders for engagements. Yet to the critic the appearance is that of "restrictive practices" which are not in the public interest. The onus of proof that these restraints are contrary to the public interest lies with the critic but is not a burden that is usually taken up.

The profession can, however, hypothesize the absence of these rules and, with conviction, take the position that the result would be contrary to the public interest. It would not be in the public interest, for example, that the selection of a practitioner by a client was a function of the skill of the practitioner's advertising agency and the size of his advertising budget; nor that a practitioner could, publicly, claim for himself professional skills exceeding those of similarly qualified practitioners, in a purely subjective fashion and without let, hindrance or reasonable constraint; nor that quality of service in the important realms of rights and property, in which chartered accountants function, should become secondary to price — for example, a public accounting engagement being tailored to a bid price rather than to the needs of the engagement, as they emerge, in the professional judgment of the chartered accountant; nor that self-promotion replace the building of a reputation for professional competence.

It is not an exaggeration to suggest that the rules concerned are basic to a profession and that their removal would lead, in the long run, to downgrading the quality of service given and to the disintegration of the profession. Since the public interest in the quality of services provided by chartered accountants is assumed in the continuing existence and growth of the profession, that interest would not be served by any act which tended to destroy the profession.

Definitions

The definitions in and provisions of the by-laws of the Institute govern these rules, where applicable. Members and students are referred, in particular, to By-law 2 which contains a number of relevant definitions.

Application*

- A member not engaged in the practice of public accounting must observe these rules except where the wording of any rule makes it clear that it relates specifically to the practice of public accounting or there is a specific exception made in a particular rule.
- Where the term "professional services" is used it means, in its application to a member not engaged in the practice of public accounting, those of his activities where the public or his associates are entitled to rely on his membership in the Institute as giving him particular competence.
- A member is responsible to the Institute for compliance with these rules by others associated with him in the public practice of the functions covered by the rules, who are either under his supervision or share with him proprietary interest in the practice, and must not permit others to carry out on his behalf acts which, if he carried them out himself, would place him in violation of the rules.
- A member who is resident outside Canada is expected to abide by the rules of the organized accounting profession in the jurisdiction in which he resides and to ensure that his actions do not bring disrepute upon the Institute.

Interpretation

In interpreting the rules, they are to be read in the light of the Foreword to the Rules of Professional Conduct and of the Interpretations issued by the council from time to time.

100 — GENERAL

- 101** Members and students shall comply with the by-laws, rules and regulations and rules of professional conduct of the Institute as they may be from time to time and with any order or resolution of the council or officers of the Institute under the by-laws.
- 102** Any member or student who has been convicted of any criminal or similar offence may be charged with professional misconduct by the professional conduct committee; in such cases, a certificate of conviction by any competent court shall be sufficient evidence of the conviction and of the commission of the offence.

**200 — STANDARDS OF CONDUCT AFFECTING THE
PUBLIC INTEREST**

- 201** A member or student shall conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.
- 202** A member or student shall perform his professional services with integrity and due care.
- 203** A member shall sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards in all functions in which he practises or is relied upon because of his calling.
- 204** A member who is engaged to express an opinion on financial statements shall hold himself free of any influence, interest or relationship, in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.
- 205** A member or student shall not sign or associate himself with any letter, report, statement, representation or financial statement which he knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility.
- 206.1** In expressing an opinion on financial statements examined by him a member shall not
- (1) fail to reveal any material fact known to him which is not disclosed in the financial statements, the omission of which renders the financial statements misleading, nor
 - (2) fail to report any material mis-statement known to him to be contained in the financial statements.
- .2** A member shall not express an opinion on financial statements examined by him
- (1) if he fails to obtain sufficient information to warrant an expression of opinion, or
 - (2) if he has not complied in all material respects with the auditing standards of the profession, or
 - (3) if the exceptions or qualifications to the opinion are sufficiently material to nullify the value of such opinion.
- .3** Subject to item (3) of rule 206.2 a member shall not express an opinion on financial statements examined by him which are not prepared in accordance with the accounting standards of the profession unless such opinion is suitably qualified; without limiting the generality of the foregoing, if a member expresses an opinion without qualification or exception that financial statements are presented in accordance with generally accepted accounting principles and if such statements depart in any material respect from the recommendations of The Accounting and Auditing Research Committee of The Canadian Institute of Chartered Accountants or its successor(s), such departure must be capable of justification as proper in the particular circumstances.
- 207** A member shall inform his client of any business connections, any affiliations, and any interests of which the client might reasonably expect to be informed but this does not necessarily include disclosure of professional services he may be rendering or proposing to render to other clients.

- 208.1** A member or student shall not, in connection with any transaction involving a client, hold, receive, bargain for, become entitled to or acquire any fee, remuneration or benefit without the client's knowledge and consent.
- .2** A member or student shall not, in connection with any transaction involving his employer, hold, receive, bargain for, become entitled to or acquire any fee, remuneration or benefit without the employer's knowledge and consent.
- 209** A member or student shall not take any action, such as acquiring any interest, property or benefit, in connection with which he makes improper use of confidential knowledge of a client's affairs obtained in the course of his duties.
- 210.1** A member or student shall not disclose or use any confidential information concerning the affairs of any client except when properly acting in the course of his duties or when such information is required to be disclosed by order of lawful authority or by the council, the professional conduct committee, the discipline committee or the appeal committee in the proper exercise of their duties.
- .2** A member or student shall not disclose or use any confidential information concerning the affairs of his employer except when properly acting in the course of his duties or when such information is required to be disclosed by order of lawful authority or by the council, the professional conduct committee, the discipline committee or the appeal committee in the proper exercise of their duties.
- 211** Subject to the provisions of Rule 210, a member shall bring to the attention of the professional conduct committee any apparent breach of these rules or any instance involving or appearing to involve doubt as to the competence, reputation or integrity of a member, student or applicant.

ICAO Council Interpretations (excerpts)

CI 202 — INTEGRITY AND DUE CARE

Documentation

- 1** Cases may arise from time to time where a member may be asked by a court, or by the professional conduct committee, to substantiate procedures carried out in the course of an assignment. If the member's files do not contain sufficient documentation to confirm the nature and extent of the work done, the member concerned may well have great difficulty in showing that proper procedures were in fact carried out. The importance of adequate documentation cannot be over-emphasized; without it, a member's ability to outline and defend his professional work is seriously impaired.

CI 203 — PROFESSIONAL COMPETENCE

Refer to Rule 206 and CI 206, Professional Standards

CI 204 — OBJECTIVITY

- 1 Rule 204 requires that a member engaged to express an opinion on financial statements hold himself free of any influence, interest or relationship, in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.
- 2 This is one of the principles expressed in the foreword to the rules and the foreword includes some exposition of the reasoning underlying the principle and thus underlying the rule. The "reasonable observer" does not, of course, exist as an individual. The term simply expresses the standard by which impairment, or the possibility of impairment, can be judged. The standard is that of a reasonable man having knowledge of all the facts involved and applying judgment objectively — that is, as an impartial observer.
- 3 To provide guidance for members, the council issues this Interpretation to set out how, in its opinion, a reasonable observer might be expected to view certain situations.

CI 205 — FALSE OR MISLEADING STATEMENTS

Application to members not in public practice

A member who is employed other than in public practice is subject to Rule 205 just as is the member in public practice. It is recognized that under exceptional circumstances, this may place such a member in a difficult position *vis-a-vis* the organization with which he is employed; however, a member fails in his professional duty if he allows himself to be associated with financial statements or other documents which he knows, or should know, are false or misleading.

CI 206 — PROFESSIONAL STANDARDS

Auditing standards

- 1 Rule 206.2 of the Rules of Professional Conduct states, *inter alia*, that no member shall express an opinion on financial statements examined by him if he fails to obtain sufficient information to warrant an expression of opinion.
- 2 The council is of the opinion that it would be useful to members to have before them a statement of certain generally accepted auditing standards which are in addition to those dealt with in the CICA Handbook. Auditing standards relate to the quality of work to be performed and the suitability of the resulting audit report to the objectives of an audit. These are pre-eminently matters of judgment.
- 3 The council considers that the following auditing standards are generally accepted; some of these, while implied in the CICA Handbook, may not be specifically set out therein:
 - a) The examination of the records and underlying data is to be performed by a person or persons having adequate technical training and proficiency in auditing, with due care and with an objective state of mind.
 - b) The work is to be adequately planned and properly executed. If assistants are employed, they are to be adequately supervised.

c) There is to be an organized study and evaluation of internal control as a basis for any reliance thereon in determining the extent of test audit procedures.

d) Sufficient appropriate evidential matter is to be obtained through inspection, observation, enquiry and confirmation to afford a reasonable basis for expressing an opinion on the financial statements.

Accounting standards

- 4 Rule 206.3: this rule, subject to item (3) of rule 206.2, requires that a member shall not express an opinion on financial statements examined by him which are not prepared in accordance with the accounting standards of the profession unless such opinion is suitably qualified. The rule further provides that, without limiting the generality of the foregoing, if a member expresses an opinion without qualification or exception that financial statements are presented in accordance with generally accepted accounting principles and if such statements depart in any material respect from the recommendations of the Accounting and Auditing Research Committee of the Canadian Institute of Chartered Accountants or its successor(s) (herein collectively referred to as the Research Committee), such departure must be capable of justification as proper in the particular circumstances.
- 5 As the term "accounting *standards* of the profession" and reference to the recommendations of the Research Committee are appearing in the rules of professional conduct for the first time, council issues this Interpretation to provide guidance for members. While the term "accounting *principles*" is widely used and is embodied in statute law, it does present difficulties. Sometimes it is held to refer only to broad general principles, while at other times its meaning has been extended to cover practices *as well as* principles.
- 6 Where the term "accounting *standards* of the profession" is used in the rule it expresses this wider meaning, i.e., that body of principles *and practices* which have been generally adopted by the profession and which are applied in the preparation of financial statements, taken together with the requirements of any governing act, such as The Business Corporations Act and The Securities Act (subject to the comment in 7(d) below).
- 7* The accounting standards of the profession include the following:
 - a) accounting practices recommended by the Research Committee;
 - b) accounting practices that differ from those recommended by the Research Committee, provided that there is substantial authoritative support for alternative treatment and the departure from the Research Committee's recommendations is disclosed;
 - c) accounting practices not specifically dealt with by the Research Committee but which are generally accepted for ordinary industrial and commercial enterprises, e.g., accrual accounting; and
 - d) requirements of any governing act or regulation, providing however, in the rare event that there is a conflict between the other accounting standards of the profession and a specific statutory or regulatory requirement the member, subject to the comment in 8 (below), is not relieved of the responsibility of making appropriate qualification in his report.
- 8 It should be noted that in connection with 7 (d) (above) the recommendations of the Research Committee to-date do not cover the whole spectrum of financial reporting. The Preface to the committee's Research Recommendations (dated December 1971) states:

"Recommendations are intended to apply to all types of profit oriented enterprises, unless a particular recommendation makes a specific exemption or extension. However, pending further study, the recommendations do not necessarily apply to the special problems of banks and insurance companies. No recommendation is intended to override the requirements of a governing statute."

The form and content of financial reports of banks and insurance companies are controlled, or heavily influenced, by statute or by governmental regulation. While the Research Committee is silent as to accounting methods appropriate to the circumstances of such financial institutions some accounting practices are prescribed or permitted for them by law or regulation which are different from those that would be considered normal for ordinary commercial and industrial enterprises. In these circumstances it is considered appropriate for an auditor to omit a reference to generally accepted accounting principles in his report and not to qualify his report.

- 9 The latter part of rule 206.3, while not ruling out circumstances in which financial reporting may depart from the recommendations of the Research Committee, places the burden of justification upon the member if he issues an unqualified report in such circumstances.
- 10 Apart from general requirements of rule 206.3, members should keep in mind policy statement No. 27, effective December 18, 1972, of the Securities Administrators in Canada which reads as follows:

"Where the term 'generally accepted accounting principles' is used, either in Securities Legislation, Regulations, and Companies Legislation and Regulations, the Securities Administrators will regard pronouncements by the Accounting and Auditing Research Committee of the Canadian Institute of Chartered Accountants to the extent set out in the research recommendations in the 'CICA Handbook' as 'generally accepted accounting principles'."

Council understands that in the implementation of this policy, the Securities Administrators have adopted the standards referred to in paragraph 7 above.

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Refer also to Rule 202 and CI 202, *Documentation*.

The Consultation Service (I.C.A.O.)

*Information for those wishing
to make use of the Consultation Service.*

General

Recognizing that many members practising alone or in smaller firms encounter problems on which they would welcome the opportunity to check their judgment with an experienced member of the profession, the council, in December 1963, established the consultation service to provide such assistance in the fields of accounting and auditing.

Consultants

A number of consultants have been selected by council because of their knowledge and reputation in the field of accounting theory, auditing practice and financial reporting. They have agreed to act as a panel to assist other members of the profession in these areas.

How to obtain assistance

A practitioner requiring assistance from a consultant should call or write the Institute and ask to be supplied with the names of consultants. The Institute will select *three* names from the panel in rotation and supply the practitioner with the consultants' names, firms, telephone numbers and addresses. The practitioner will select *one* consultant and contact him directly by telephone or letter

Areas of consultation

A problem should not be presented to a consultant *until the practitioner has explored all avenues of approach to a solution* and has reached the point where he needs either confirmation of his findings or additional help. He may ask the consultant —

- how to clear up a difficult point;
- for confirmation of a conclusion he has already reached; or
- for guidance on where to seek additional information.

Presentation of problem

The practitioner should telephone or write the consultant and clearly state the facts. He should explain the problem as he sees it and the steps he has taken to resolve the problem. He should then clearly state the question on which he requires an answer.

Action by consultant

The practitioner may expect the following results from his call or letter:

- (1) A direct answer or recommendation.
- (2) A deferment of the answer for further study, but within a stated time limit.
- (3) Suggested research references which will supply detailed information about the problem.
- (4) A recommendation that, because of the time and amount of work or research required, the matter be handled as a regular referral on a fee basis.
- (5) A recommendation that another consultant with more experience in the specific field be contacted.

Type of consultation

It is hoped that in many cases the consultant will be able to give advice in the course of a telephone conversation. In other cases he may request information in writing and reply in writing. In still other cases he may request the practitioner to visit him in his office, bringing the relevant working papers. The onus, of course, will be on the practitioner to comply with the requests of the consultant, who is contributing his time to assist the practitioner.

Confidential relationship with clients

It is essential that the practitioner seeking advice should avoid anything which might be interpreted as violating the confidential relationship existing between him and his client. Accordingly, the following rules, which are not intended to be all-inclusive, should be observed:

- The problem should be stated as a hypothetical one without disclosing the client's name, unless permission with respect to disclosure is first obtained.
- If, for any reason, it is felt that even stating the case as a hypothetical one might identify the client, his permission should be obtained before doing so. In this respect, any doubts should be resolved in favour of getting the client's consent.
- No documents, working papers or other material should be submitted to the consultant if this might identify the client, unless the client's approval is first obtained.

Responsibility of consultant

This is a wholly voluntary and private service within the profession. Members are under no duty to consult nor is the consultant as such under any duty to respond in any particular case.

The consulting service does not contemplate the consultant assuming any legal or moral responsibility for the advice which he may give. The name of the consultant and his firm should not be disclosed to the client. It would be entirely beyond the intention of this plan for the practitioner to attempt to impress a client by suggesting that he could obtain another opinion from a prominent consultant. If another *opinion* is to be obtained, it must be on a formal referral basis. The practitioner, of course, is entitled to ask his client's permission to hold an informal consultation with a member of the consulting service.

Future development

The consulting service has been established on the basis outlined above; its contribution to the profession, and the problems involved, will be assessed from time to time. Depending on our experience, it can be modified or expanded over the years.

The success of this plan will depend on the practitioners who take advantage of it. Practitioners who have made a genuine effort to resolve a problem themselves and have reached tentative conclusions, should find it most useful to be able to check their conclusions with an experienced member of the profession before giving a final answer to their client.

Fees Mediation Service (I.C.A.O.)

Procedure for those wishing to make use of the Fees Mediation Service.

General

The chartered accountant and his client, before deciding to make a submission for mediation, should make a genuine attempt to settle the dispute by negotiation; only if negotiation between the parties fails should the service be requested.

When disputes are brought to the attention of the Institute, and if both parties agree in writing to be bound by the decision of the mediation panel:

- the Institute obtains as much information as possible from both parties;
- a mediator(s) meets with each party or with a representative authorized by either party provided such representative shall not be legal counsel;
- the mediation panel reviews the material submitted directly to the Institute and the facts gathered by the mediator(s);
- the mediation panel's decision is eventually confirmed to each party in writing, with no reasons being given.

No charge is made for such referrals. It is understood that this procedure involves no legal obligation on the part of clients or members to refer a matter to the Fees Mediation Panel nor does it constitute a submission under the Arbitrations Act (Ontario). All material received or reviewed by the Institute or its representative will be held in strict confidence. The Institute shall be under no legal obligation with regard to any such referrals.

Detailed procedure

Before submitting a fees mediation request, both parties should be in agreement on the use of the service and their written submissions should be sent to the Institute immediately after such agreement has been reached.

The client

The client submits a letter to the secretary of the Fees Mediation Panel of the Institute containing the following:

- (1) A request that the Institute appoint a mediator or mediators to mediate the fee dispute, naming the member concerned.
- (2) An outline of the problem, stating the services rendered and the amount of fee in dispute and the reasons for the objection.
- (3) An acknowledgement that the client agrees to the related working papers being made available to the mediator(s).
- (4) An undertaking to attend meetings with the mediator(s) when requested and that he understands that neither party will be represented or accompanied by legal counsel at such meetings.
- (5) An undertaking to be bound by the decision of the fees mediation panel.

The member

The member submits a letter to the secretary of the Fees Mediation Panel of the Institute containing the following:

- (1) A request that the Institute appoint a mediator or mediators to mediate the fee dispute, naming the client concerned.
- (2) An outline of the problem stating services rendered, the amount of fee in dispute and the member's representation in support of his fee.
- (3) An undertaking to make related working papers available to the mediator(s) and to disclose to the mediator(s) full particulars in support of his fee.
- (4) An undertaking to attend meetings with the mediator(s) when requested and that he understands that neither party will be represented or accompanied by legal counsel at such meetings.
- (5) An undertaking to be bound by the decision of the fees mediation panel.

Please note:

Members and clients should clearly understand that they are under no obligation to make use of this service. It is made available on a voluntary basis to those members and their clients who wish to take advantage of it. It should be further understood that neither the Institute nor its volunteer members performing this gratuitous service will be liable in any way to members and clients and that members and clients using the service do so on that understanding.

Practice Advisory Service (I.C.A.O.)

*Information for those wishing
to use the Institute's Practice Advisory Service.*

General

The service began operating in May 1972. On the recommendation of the Small Practices Committee, a full-time professional practice adviser was added to the Institute's staff at that time. The adviser's background is in public practice with a small and medium-sized firm and he is knowledgeable about the problems of such practices. It has been demonstrated that the service is meeting an important need for practitioners; in a little more than a year from its commencement nearly one hundred visits to practitioners in their offices have taken place — generally of one or two days duration, but on occasion three or even more days per visit.

The service is offered *without charge* and has the very practical advantage that it is made available to the practitioner in his office and on his time schedule. As it is confined to advising and suggesting and does not include implementation and performance, use of the service is on the understanding that neither the Institute nor its staff providing the service will be held liable in any way to the practitioner.

Objective

The objective of the Practice Advisory Service is to encourage and to assist the practitioner, on a voluntary and confidential basis, in his efforts to maintain quality and to improve his professional performance. The adviser works towards this objective by providing any or all of the following:

- (1) guidance on practice organization, administration and management;
- (2) review and discussion of financial statements, opinions and supporting working papers, to help the practitioner become aware to what extent he may be able to use more effective audit techniques or may be falling short of compliance with generally accepted accounting principles and auditing standards; and
- (3) review and discussion of unaudited statements and other non-opinion work.

The service is educational in purpose; it is not an "inspection" by the Institute, nor a means whereby practitioners are either accredited or censured.

Another facet of the service is that, through his in-depth contacts with practitioners, the practice adviser serves as a direct but informal line of communication between practitioner and the Institute.

How does the practitioner avail himself of the service?

A practitioner wishing to use the service should initiate the request for a visit, by contacting the adviser at the Institute's office. However, if the adviser is carrying out a visit in a particular part of the province, he may seek invitations from other practitioners in that area. It is hoped that members approached in this manner will take the opportunity to use the service, particularly when it is so readily available, but there is no obligation to do so. It is provided on a voluntary basis to those who wish to take advantage of it.

What criteria are used by the adviser in his work?

The criteria and resource material used by the adviser in assisting a practitioner include:

- (1) the CICA Research Recommendations as contained in the CICA Handbook;
- (2) the CICA Research Studies;
- (3) the practice guidelines contained in the Ontario Institute's relevant By-laws, Rules of Professional Conduct and Council Interpretations;
- (4) the applicable legislation of regulatory authorities; and
- (5) the auditing, accounting and practice administration texts in general use by practitioners, colleges and universities.

The experience built up by the adviser from his visits is valuable to practitioners generally since, without identifying source, he is able to suggest methods worth emulating as well as pitfalls to be avoided.

What advance preparation is required by a practitioner requesting the service?

There is very little advance work required on the part of a practitioner. He may want to select files and engagements to be discussed with the adviser and formulate any particular problems and questions he wishes to present to the adviser.

Practitioners may be asked to furnish, if possible, some advance information of a general nature. This could be the character of any specific problem and questions, the approximate mix of engagements (e.g. opinion work, bookkeeping, tax, etc.) and the number and composition of the practitioner's or firm's personnel. This type of advance data is treated as confidential and enables the adviser to come well armed with appropriate resource material so that the maximum benefit is derived from the visit.

It is expected that the practitioner requesting the service will have available for reference purposes current up-dated copies of the CICA Handbook, encompassing Research Recommendations, and the Act, By-laws and Rules of Professional Conduct of the Ontario Institute.

APPENDIX III - ACCOUNTING ~~P.A.C.~~ - S.M.A.O.

PUBLIC ACCOUNTANCY ACT, R.S.O. 1970 c. 373 (excerpts)

7. It is the duty of the Council to administer the provisions of this Act and in particular, but without limiting the generality of the foregoing, the functions of the Council include,

- (a) the grant or refusal of licences, in accordance with this Act;
- (b) the maintenance and, if thought fit, the publication of a roll of the persons for the time being licensed under this Act;
- (c) the prescription of the fees payable on the grant or renewal of licences under this Act;
- (d) the maintenance and improvement of the status and standards of professional qualifications of public accountants practising as such in Ontario;
- (e) the consideration of matters of common interest and concern to public accountants, and the submission of representations to any government department or public authority with reference to any such matters;
- (f) the provision of scholarships for students in public accountancy and of maintenance grants for such students whose means appear to the Council to be insufficient to enable them to pursue their studies;
- (g) the conduct and encouragement, whether by means of financial assistance or otherwise, of research in accountancy;
- (h) the exercise of the disciplinary powers conferred by this Act; and
- (i) the prosecution of offences under this Act. R.S.O. 1970, c. 373, s. 7.

8.—(1) Except as otherwise expressly provided by this section, all matters that arise for decision at any meeting of the Council shall be decided by a majority of votes of members present and voting by show of hands.

(2) No resolution of the Council relating to,

- (a) any of the functions of the Council referred to in clause h or i of section 7;
- (b) the making of regulations under section 31;
- (c) the revocation or non-renewal of a licence granted under this Act; or
- (d) the granting of an exemption to any person pursuant to subsection 2 of section 14 from any of the conditions of section 14, or the approval of conditions subject to which such exemption shall be granted,

is valid unless approved by the votes of at least three-quarters of the members of the Council present and voting thereon.

(3) No resolution of the Council relating to any of the matters mentioned in subsection 2 is valid unless the notice calling the meeting at which the resolution is moved has specified the general nature of the business to be transacted thereat. R.S.O. 1970, c. 373, s. 9.

12.—(1) The Council may from time to time appoint committees from among its members.

(2) The Council may **delegate** to any such committee, subject to such restrictions or conditions as the Council may think fit, any of its powers or duties, other than those referred to in subsection 2 of section 9, and may dissolve any such committee. R.S.O. 1970, c. 373, s. 12.

13.—(1) If a person licensed under this Act,

- (a) has been convicted of a criminal offence;
- (b) becomes of unsound mind;
- (c) has been adjudged bankrupt or has made arrangement with his creditors; or
- (d) has been found on inquiry held by the Council to be guilty of conduct disgraceful to him in his capacity as a public accountant,

the Council may, subject to the provisions of this section, revoke his licence.

(2) Where the Council intends to revoke any licence in pursuance of clause *a*, *b* or *c* of subsection 1, the Council shall first cause a written notice of its intention to be served on such person in the prescribed manner and shall on application made by such person within one month from the date of the service of the notice consider any representations with regard to the matter that may be made by him to the Council, either in person or by counsel.

(3) In any case in which it appears to the Council that a person licensed under this Act has been guilty of conduct disgraceful to him in his capacity as a public accountant, the Council may cause an inquiry to be held.

(4) Where an inquiry is to be held under this section, the Council shall forthwith cause to be served on the person concerned a written notice of the proposed inquiry specifying the time and place at which it is to be held and the subject-matter thereof, and the person concerned is on application entitled to be heard at the inquiry either in person or by counsel. R.S.O. 1970, c. 373, s. 18.

19. Where the Council refuses the application of any person for the grant or renewal of a licence, or revokes any licence granted to any person, it shall forthwith cause written notice of such refusal or revocation to be served on such person. R.S.O. 1970, c. 373, s. 19.

20.—(1) No person whose licence has been revoked shall, except as provided in this section, be granted a licence under this Act.

(2) A person whose licence has been revoked may, either on his application or on motion of the Council and after inquiry, be granted a new licence and his name may be restored to the roll at the discretion of the Council either without payment of a fee or on payment of such fee as the Council may determine. R.S.O. 1970, c. 373, s. 20.

21. Where the Council,

- (a) refuses to grant a licence or a new licence;
- (b) refuses to renew a licence; or
- (c) revokes a licence,

the person aggrieved may, within three months from the day on which notice thereof was served on him, apply to the Supreme Court and, upon due cause shown, the court may make an order directing the Council to grant the licence, renew the licence or cancel the revocation of the licence, as the case may be, or may make such other order as may be warranted by the facts, and the Council shall forthwith comply with such order and such order is final. R.S.O. 1970, c. 373, s. 21.

22. If any person wilfully procures, or attempts to procure, the granting to him of a licence under this Act, or the renewal of such licence, by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either orally or in writing, he is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 and not more than \$250. R.S.O. 1970, c. 373, s. 22.

24.—(1) Subject to the provisions of this section, no person who is not licensed under this Act shall, within Ontario,

- (a) take or use the name or title of "Public Accountant";
- (b) practise as a public accountant, or
- (c) hold himself out as being licensed as a public accountant or use any designation or initials indicating or implying that he is licensed as a public accountant.

(2) Notwithstanding anything in this section, the Council may permit any person who is a non-resident of Ontario to practise as a public accountant within Ontario without a licence under this Act, subject to any terms and conditions that may from time to time be prescribed.

(3) Any person who contravenes provision of this section, without prejudice to any other proceedings that may be taken, is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 and not more than \$250 for a first offence and to a fine of not less than \$200 and not more than \$500 for any subsequent offence.

(4) Where a contravention of this section by any person is occasioned by the fact that his licence has been revoked, it is a good defence to any proceedings in respect of such contravention to prove that, at the time when such contravention is alleged to have been committed, notice of the revocation had not been served in accordance with this Act or the regulations hereunder, or that the time for appealing from the revocation had not expired or an appeal therefrom had been brought and had not been determined. R.S.O. 1970, c. 373, s. 24.

26. No person is entitled to recover any costs incurred or charges made as a public accountant unless such person was licensed under this Act at the time when such costs were incurred or when the services were rendered in respect of which such charges were made. R.S.O. 1970, c. 373, s. 26.

31.—(1) Subject to the provisions of this Act, the Council shall or may, as the case may be, ~~prescribe by regulation~~ anything that is by this Act required or authorized to be prescribed and may make such further provisions as may seem to the Council necessary or desirable for carrying out or facilitating any of the purposes of this Act.

(2) The Council shall on receipt of the prescribed charges supply a copy of any regulation made under this Act and of any forms prescribed by such regulation to any person applying therefor.

(3) The Lieutenant Governor in Council may annul any regulation made by the Council under this Act. R.S.O. 1970, c. 373, s. 31.

8. RULES OF PROFESSIONAL CONDUCT (P.A.C.) (excerpts)

Section 7 of The Public Accountancy Act vests Council with the responsibility for the maintenance and improvement of the status and standards of professional qualifications of public accountants practising as such in Ontario. To this end Council has prescribed the undernoted rules of professional conduct which are aimed, first and foremost, at the protection of the public and secondly at achieving orderly and courteous conduct between licensees. Without restricting the generality of Section 18(1)(d) of The Public Accountancy Act, the Council, in considering whether or not a person licensed under The Public Accountancy Act has been guilty of conduct disgraceful to him in his capacity as a public accountant, will have regard to the rules of professional conduct.

Integrity and Competence

- (a) A licensee should perform his services to his clients with integrity, care and diligence. He should sustain his professional competence by keeping himself informed of, and complying with, developments in professional standards in all functions in which he practises or is relied upon because of his calling as a public accountant.
- (b) A licensee who is engaged to express an opinion on financial statements should hold himself free of any influence, interest or relationship in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.
- (c) A licensee should not take any action, such as acquiring any interest, property or benefit, in connection with which he makes improper use of confidential knowledge of a client's affairs obtained in the course of his duties.
- (d) A licensee should not disclose or use any confidential information concerning the affairs of any client except when properly acting in the course of his duties or when such information is required to be disclosed by order of lawful authority.
- (e) A licensee should not sign or associate himself with any letter, report, statement, representation or financial statement which he knows, or should know, is false or misleading, whether or not the signing or association is subject to a disclaimer of responsibility.
- (f) A licensee should not express an opinion on financial statements examined by him.
 - (1) if he fails to obtain sufficient information to warrant an expression of opinion, or

- (2) if he has not complied in all material respects with the auditing standards of the profession, or
 - (3) if the exceptions or qualifications to the opinion are sufficiently material to nullify the value of such opinion, or
 - (4) subject to (3) above and unless the opinion is suitably qualified, if the financial statements were not prepared in accordance with generally accepted accounting principles.
- (g) In expressing an opinion on financial statements examined by him, a licensee should
- (1) reveal any material fact known to him which was not disclosed in the financial statements, the omission of which renders the financial statements misleading, and
 - (2) report any material mis-statement known to him to be contained in the financial statements.
- (h) A licensee in the exercise of his functions on behalf of a client should not bargain for, or receive for his own use any fee or remuneration without his client's knowledge and consent.

SOCIETY OF MANAGEMENT ACCOUNTANTS OF ONTARIO, CODE OF PROFESSIONAL ETHICS
(excerpts)

SECTION "A" – PROFESSIONAL ETHICS

1.01 Professional Ethics

A Code of Professional Ethics is a set of rules of conduct which a profession imposes upon itself and its members. Such rules go beyond the requirements of the law; they are intended to provide the members of a profession with guidelines as to the type of professional behaviour which is likely to gain public confidence. A code of ethics is thus a voluntary assumption of self-discipline in the service of the public interest. It is an obligation to behave in a way which will benefit the public and thus serve the best interests of the profession as a whole.

1.02 The Public Interest

At the heart of all great professions there is a commitment to serve the public good. This commitment rests on a desire to serve the public and on the practitioners' commitment to and pride in their own skill and disciplined judgement.

The adoption of the Code of Professional Ethics for the Society of Industrial Accountants of Ontario recognizes and reflects the Society's concern for the future of the accounting profession in Canada and for the creative contribution which it is prepared to make to the public interest.

While accounting (like other professions) rose from humble beginnings, it is not difficult to show the significant relationship to the public interest that the profession has achieved today. Financial statements influence important social and economic decisions. The credit machinery, the audit function, the tax practice, the corporate financial reporting are today at their level of development only because the accounting profession contributed substantially to the effective operation of government and to the stability of the whole structure of social and economic institutions.

1.03 The Management Accountant

A management accountant is essentially one who, as an officer, employee, consultant, manager, etc., carries out his professional functions and gives professional counsel in areas of accounting, measurements, cost determination, financial analysis and communications, design of management information systems and other areas related to the planning, organizing, directing and controlling of activities which are designed to achieve desired objectives.

1.04 The Professional Attitudes

A management accountant, as any professional man, is one who is skilled in the areas of knowledge of his profession and displays a *professional attitude* toward his work.

The professional attitude of the management accountant is characterized by the following:

- * *Responsibility*, which implies a desire to serve the public interest and a resolve to place the public good above other considerations.
- * *Commitment*, which implies integrity, a sense of trusteeship and an obligation to protect the employer's or client's interest.
- * *Competence*, which implies mastery of technical subjects requiring advanced intellectual training and a commitment to the continued acquisition of special skills on a high intellectual plane by means of self-imposed standards of excellence.

The rules of professional conduct which are defined in more detail in Section "B" of this Code are expressed in relation to those three principal tenets of professional attitude.

SECTION "B" – RULES OF PROFESSIONAL CONDUCT

2.00 Responsibility

- 2.01 The reliance of the public, private enterprise and government on sound financial reporting and advice concerning measurements, information systems, forecasting and the communication of financial and other economic data for many purposes, imposes on the management accountant an obligation that his work be endowed with public interest. For this reason all members shall at all times maintain independence of thought and action, maintain a high standard of personal conduct and uphold the dignity and honour of the accounting profession.
- 2.02 Independence of thought and action is an expression of the professional integrity of the individual. A member who is engaged as a public accountant or auditor shall observe the rules of independence defined by the professional bodies which govern public practice. Any such member must, before he expresses his opinion on financial statements, assess his relationship with his client to determine whether he might expect his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts.
- 2.03 When preparing financial statements or expressing an opinion on financial statements which are designed to inform the public and/or management, a member shall disclose all material facts known to him so as not to make such financial statements misleading, shall acquire sufficient information to

warrant an expression of opinion and shall report all material misstatements or departures from generally acceptable accounting principles.

A member, in expressing his opinion on representations in financial statements which he has examined and which are designed to inform the public and/or management, may be held guilty of an act discreditable to the profession if:

- * He fails to disclose a material fact known to him and which is not disclosed in the financial statements.
- * He fails to report any material misstatements known to him to appear in financial statements.
- * He fails to acquire sufficient information to warrant expression of an opinion.
- * He fails to direct attention to any material departure from generally accepted accounting principles.

2.04 A member shall not commit an act discreditable to the profession.

2.05 A member shall not engage in or counsel any business or occupation which, in the opinion of the Society of Industrial Accountants, behaves in a manner which is incompatible with the professional ethics of a management accountant.

2.06 A member shall not adopt practices in obtaining engagements, as a consultant or employee, which encroach on the practice of another member; nor so act in any other way as to adversely reflect on the public or professional reputation of the management accountant.

4.00 Competence

4.01 A member shall at all times maintain the standards of competence expressed by the academic and experience requirements for admission to the Society and for continuation as a professional member.

4.02 A member has an obligation to extend the knowledge upon which the profession of accounting is based to others within the profession, and to generally promote the advancement of the profession.

4.03 A member is expected to undertake as an employee or a management consultant only those engagements for which he is qualified, and will engage (or advise an employer or client to engage) other specialists whenever such an arrangement would be in the best interest of the employer or client.

4.04 A member shall bring to the attention of the Society any instances involving the reputation, dignity or honour of the Society which have resulted through lack of competence of a member or through his unethical, illegal or unfair practice.

- 4.05 A member associated with a professional partnership or company, as a partner, principal, director or officer, shall endeavour to ensure that the organization with which he is associated abides by the rules of professional conduct established by the Society.

SECTION "C" – GUIDELINES FOR THE ENFORCEMENT OF THE CODE OF PROFESSIONAL ETHICS

The disciplinary work of the Society shall be carried out by:

- a. The Professional Conduct Committee
- b. The Review Board
- c. The Council.

5.00 The Professional Conduct Committee

- 5.01 The Professional Conduct Committee shall be composed of a Chairman and four members, all appointed by Council on the recommendation of the Executive.

- 5.02 The Professional Conduct Committee shall be responsible for initiation of the disciplinary work of the Society as follows:

- a. Any complaint preferred against a member shall be submitted to the Professional Conduct Committee. If, upon consideration of a complaint, it appears to the Committee that a *prima facie* case is established showing a violation of any by-law or any provision of the Code of Professional Ethics or conduct discreditable to a management accountant, the Professional Conduct Committee shall report the matter to the Secretary of the Society of Industrial Accountants of Ontario, who shall summon the member involved to appear at the next meeting of the Professional Conduct Committee.
- b. If the Professional Conduct Committee shall dismiss any complaint preferred against a member or fail to act thereon within ninety days after such complaint is preferred to it in writing, the member preferring the complaint may present the complaint in writing to the Review Board.

- 5.03 For the purpose of adjudicating charges against members, the Professional Conduct Committee shall follow a procedure as outlined below:

- a. The Secretary of the Society of Industrial Accountants of Ontario shall mail to the member concerned, at least thirty days prior to the proposed meeting of the Professional Conduct Committee, a written notice of the charges to be adjudicated. Such notice will be mailed by registered letter and addressed to the member at his last known address, according to the records of the Society.

- b. The Professional Conduct Committee shall, before the proposed meeting, assemble or cause to have assembled such evidence, documents or authenticated statements as may be deemed necessary, and at the meeting will hear evidence of witnesses and receive any additional evidence and statements which it deems necessary. It may require the attendance before it of any members and the production of any books, documents and working or other papers.
- c. At any formal hearing of a charge, the person charged shall have the right to be present during the hearing, to be represented by legal counsel or by a member, to question any witnesses (personally, by counsel or by member representative) and to submit statements and evidence and arguments.
- d. The statutory declaration of any person may be accepted as *prima facie* evidence of the facts stated in it and any witness may be asked to take a statutory declaration that the evidence is true.
- e. The report of any formal hearing or appeal signed by the Chairman shall be conclusive evidence of the proceedings for all purposes.
- f. A judgement in support of any charges laid before the committee shall be deemed valid if it is favoured by a simple majority of all of the members of the committee in good standing, at the time the decision is rendered. A quorum shall consist of at least three members, including the Chairman. Unless it be otherwise established by Council, other procedures at all formal hearings shall be determined by the Chairman of the Professional Conduct Committee whose decision shall be final, binding and conclusive.
- g. The cost of any formal hearing will be borne by the Society unless the Professional Conduct Committee specifically rules that it should be charged to the member.
- h. If, after hearing the evidence presented by the complainant and by the defence, the Professional Conduct Committee finds the defendant guilty of an offence, it may, by a majority vote of the members present and voting, admonish or suspend for a period of not more than two years the member against whom the complaint is made or, by a two-thirds vote of the members present and voting, it may expel such member. All mem-

bers of the Committee, including the Chairman, will have one equal vote.

- i. The Professional Conduct Committee after hearing the case shall decide, by a majority vote of the members present and voting, whether the statement of the case and the decision to be published shall disclose the name of the member involved. A statement of the case and decision of the Professional Conduct Committee shall be prepared by the Chairman of the Committee.

5.04 The member concerned in the case decided by the Professional Conduct Committee may request a review of the decision by the Review Board; provided such a request for review is filed with the Secretary of the Society of Industrial Accountants of Ontario within thirty days after the decision of the Professional Conduct Committee has been rendered and communicated to the member.

5.05 Any decision of the Professional Conduct Committee shall become effective as follows:

- a. Upon expiration of thirty days after the date of the committee's decision (unless specified otherwise by the committee) and if no request for review has been properly filed with the Secretary of the Society within such thirty day period.
- b. Upon the denial of the request for review, if such request has been properly filed within the thirty days, but has been denied by the Review Board.
- c. Upon the effective date of a decision of the Review Board affirming the decision of the Professional Conduct Committee in cases where a review has been granted by the Review Board (or Council) and the Board (or Council) has affirmed the decision of the Professional Conduct Committee.

6.00 The Review Board

6.01 The Review Board shall be appointed by Council on the recommendation of the Executive and shall consist of a Chairman and four members, none of whom shall be members of the Professional Conduct Committee.

6.02 The Review Board shall be responsible for dealing with all disciplinary matters of the Society which have been submitted for ruling to the Professional Conduct Committee and against which the member concerned has filed an appeal, or with those cases on which the Professional Conduct Committee has failed to act within the specified period of time.

6.03 The Review Board shall follow a procedure as outlined below:

- a. After having received from the member an appeal against the decision of the Professional Conduct Committee, the Review Board shall decide, by a majority vote of Board members present and voting, whether or not such a request for review shall be

allowed. The decision by the Review Board in such matters shall be final and subject to no further review. A quorum of the Review Board shall consist of at least three of its members.

- b. If the member's request for a review of the decision of the Professional Conduct Committee is not acted upon by the Review Board within ninety days after such a request has been filed with the Secretary of the Society in writing, the member will have the right to submit his request for review to the Council of the Society. The Council may decide not to allow the request of a member for a review of the decision rendered and such a decision of the Council will be final and subject to no other review; or the Council may direct the Review Board to conduct the review of the decision and specify the date by which the decision of the Review Board shall be made available to the member.
- c. If the request for review by the Review Board is allowed, the Secretary of the Society of Industrial Accountants of Ontario shall mail to the member concerned, at least thirty days prior to the proposed meeting of the Review Board, a written notice of the acceptance of the member's request to review the decision of the Professional Conduct Committee. Such notice shall be mailed by registered mail addressed to the member concerned at his last known address according to the records of the Society.
- d. The Review Board shall review the decision of the Professional Conduct Committee in accordance with its rules of practice and/or procedure established by Council. On review of such a decision, the Review Board may affirm, modify or reverse all or any part of such decision or make such other disposition of the case as it deems appropriate. The Review Board will indicate the nature of the reasons why it has considered a review to be warranted.
- e. Any decision of the Review Board shall become effective when made unless the Review Board indicates otherwise, in which case it shall become effective at the time determined by the Review Board.

7.00 The Council

- 7.01 At any time after any decisions of the Professional Conduct Committee and of the Review Board have been rendered and published, the Council may, by a two-thirds vote of the members present and voting, and on recommendation of the Executive, recall, rescind or modify any penalty of expulsion or suspension. A statement of such action shall be separately published by Council and the member duly notified of the action.

8.00 General

- 8.01** Any member who is suspended shall not, during the period of suspension, be considered a member for any purpose and his name shall be removed from the register for the period of the suspension.
- 8.02** All decisions of the Professional Conduct Committee, the Review Board or the Council shall be communicated to the member by the Secretary of the Society no later than fourteen days after the decision has been rendered.
- 8.03** Neither the Society nor the Council shall be required to take notice of any published article or private communication or of any other statement concerning the conduct of a member.
- 8.04** If the Society of Industrial Accountants of Ontario requests the resignation of a member, or has withdrawn from the register of the Society the name of any member for reasons of unprofessional conduct, the Secretary of the said Society shall inform the Secretary of the Canadian Society of the name of such member and the reason for the action taken. The Secretary of the Canadian Society shall transmit this information to the Secretary of each Provincial Society.
- 8.05** The Society of Industrial Accountants of Ontario agrees to honour the disciplinary actions of all other Societies with which it is affiliated.

APPENDIX IV - ACCOUNTING - C.G.A.A.O.

CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO, LETTERS
PATENT AND BY-LAWS (excerpts)

THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION
OF ONTARIO
INCORPORATED BY LETTERS PATENT

Preamble

WHEREAS the Corporations Act 1953 provides that with the exceptions therein mentioned the Lieutenant-Governor may in his discretion, by Letters Patent, issue a Charter to any number of persons, not less than three, of twenty-one or more years of age, who apply therefore, constituting them any others who become shareholders or members of the corporation thereby created a corporation for any of the objects to which the authority of the Legislature extends;

AND WHEREAS by the said Act it is further provided that the Provincial Secretary may in his discretion and under the Seal of his office have, use, exercise and enjoy any power, right or authority conferred by the said Act on the Lieutenant-Governor;

AND WHEREAS by their Application in that behalf the persons herein named have applied for the issue of a Charter constituting them a corporation for the carrying out of the undertaking hereinafter set forth;

AND WHEREAS it has been made to appear that the said persons have complied with the conditions precedent to the issue of the Charter and that the said undertaking is within the scope of the said Act;

Incorporation. Corporate name.

NOW THEREFORE KNOW YE that under the authority of the hereinbefore in part recited Act I DO BY THESE LETTERS PATENT issue a Charter to the persons hereinafter named that is to say:

Thomas Coleman Grandy, Assistant Secretary-Treasurer, James Saunders Dow, Chief Accountant, both of the Township of North York, in the County of York and Province of Ontario; Ross Roy Gillespie, Treasurer, and John Allen Sheridan, Accountant, both of the City of Toronto, in the said County of York; Harold Ernest Garland, of the Township of Vaughan, in the said County of York, Income Tax Assessor; and Arthur Frederick of the City of Ottawa, in the County of Carleton and Province of Ontario, Income Tax Assessor; constituting them and any others who become members of the Corporation without share capital under the name of

THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION
OF ONTARIO

Objects

for the following objects, that is to say:

- (a) TO promote the interests, by membership and otherwise, of all present and future Certified General Accountants, domiciled in Ontario, who are or who become certified members of the General Accountants Association, incorporated by Special Act of the Parliament of Canada (3 & 4 George V, Chapter 116) who, having passed the required examinations and having complied with the practical accounting experience requirements, are entitled to the designation "Certified General Accountant" and the use of the initials "C.G.A.";
- (b) TO promote and increase the knowledge, skill, proficiency and usefulness of its members in all things relating to the business or profession of an accountant or auditor in private or public practice;

- (c) TO establish lectures and classes for students-in-accounts and to enter into agreement with the governing body of any university for the attendance of students-in-accounts at such lectures, classes and correspondence courses as may come within the course of subjects prescribed by the by-laws of the Corporation;
- (d) TO hold such examinations and to prescribe such tests of competency as may be deemed expedient to *qualify* for admission to membership, and to grant certificates of efficiency to such persons;
- (e) TO discipline any member guilty of any fault or misconduct in the practice of his business or profession;
- (f) TO invest the moneys of the Corporation not immediately required for the objects of the Corporation in any securities in which, under The Trustee Act or any other Act, trustees may invest trust funds; and
- (g) TO affiliate with any other association having objects the same as or similar to those of the Corporation;

Head Office

THE HEAD OFFICE of the Corporation to be situate ~~at~~ the said City of Toronto; and

Directors

THE FIRST DIRECTORS of the Corporation to be Thomas Coleman Grandy, James Saunders Dow, Ross Roy Gillespie, John Allen Sheridan, Harold Ernest Garland and Arthur Frederick, hereinbefore mentioned;

Without Purpose of Gain

AND IT IS HEREBY ORDAINED AND DECLARED that the Corporation shall be carried on without the purpose of gain for its members and ~~the~~ profits or other accretions to the Corporation shall be used in promoting its objects;

Board of Governors

AND IT IS HEREBY FURTHER ORDAINED AND DECLARED that the directors of the Corporation shall constitute the Board of Governors of the Corporation.

GIVEN under my hand and Seal of office at the City of Toronto in the said Province of Ontario this second day of August in the year of Our Lord one thousand nine hundred and fifty-seven.

(Seal)

(Signed)

G. H. DUNBAR,

Provincial Secretary

C.G.A.A.O. By-Laws (excerpts)

ARTICLE 15

MAINTENANCE OF STANDARDS

1. In order to maintain the standards of the Association the Board shall;

(a) Enquire into, hear and pronounce upon any complaints made against any member of the Association by another member, charging him with any breach of discipline or with any action derogatory to the honour of the Association. If, after hearing the members and such witnesses as they may present, the Board declares the charge to be well founded, the Board may proceed to suspend the accused member for a period named by them, or they may expel him from the Association;

(b) Hear, with a view to reconciliation between the members of the Association, particulars of any differences that may arise regarding professional matters;

(c) Hear and decide upon all complaints and claims made against members of the Association, by persons other than members of the Association, in matters connected with the professional duties of such members;

(d) Make and establish rules regulating the conduct of the members; and especially ~~decide what shall constitute a breach of discipline, or be regarded as an offense derogatory to the good standing of the members of the Association; determine the time and manner of hearing for~~

any such offense; the nature, character and extent of the penalty to be inflicted; and generally execute all rules necessary to carry into effect the full meaning of the present By-laws and objects of the Association.

(e) Suspend or expel any member convicted of a criminal offence upon production of a certified copy of the said conviction.

(f) Assign such investigation to a committee.

2. In all cases in which members are disciplined or expelled by the Board, or in which disciplinary rules are made by the Board assent to the resolution shall be signified by the signatures of the members present and a simple majority shall carry the resolution, and the notice calling the meeting of the Board shall specify in detail the object of such meeting.

3. Any member suspended or expelled by the Board for misconduct shall have the right of appeal to the Association at the next following Annual General Meeting or at a Special General Meeting, provided that written notice of such appeal is filed by the affected member with the Secretary within thirty (30) days of the date of mailing notice of the member's suspension or expulsion.

4. It shall be the duty of the Secretary to receive all complaints against any member of the Association from whatever source. All complaints shall be in writing and signed by the complainant.

5. Any member may tender his resignation which must be in writing, but it shall not take effect until all arrears of fees, special assessments and other indebtedness to the Association have been fully paid.

6. Members whose resignations are received by the Secretary within thirty (30) days subsequent to the commencement of a fiscal year shall not be liable for the annual dues for that fiscal year.

7. Members whose resignations are received by the Secretary after the expiration of the said period of thirty days shall be liable for the annual dues for the current fiscal year and the Board may decline to consider a resignation until such dues are paid; provided, however, that the Board may, at its discretion, waive this stipulation.

EXPULSION OR SUSPENSION

8. Any member who is in default for Annual Dues, or any portion thereof, three months after they become due and payable may, with notice, be suspended from membership by the Board.

9. Any member shall ipso facto cease to be a member in the event of and upon his failing, for two consecutive years, to pay his annual fees and assessments.

REINSTATEMENT OF MEMBERSHIP

10. Any person whose membership in the Association has been suspended, or whose resignation has been accepted, may apply in writing to the Board for reinstatement of membership.

(a) The Board shall have the power to refuse or grant such application and to prescribe the conditions upon which the application may be granted.

(b) Such conditions may include the payment of all arrears of annual or other fees, the submission of such written evidence as may be prescribed, the submission of statements showing the present financial position of the applicant, and such other conditions as the Board may deem fit to be prescribed.

(c) If the Board refuses such application the applicant shall have the right of appeal to the Association at the next following Annual General Meeting or at a Special General Meeting, provided that notice of such appeal, in writing be filed by the applicant with the Secretary within thirty days of the date of mailing notice of the Board's refusal to grant the application for reinstatement.

PROFESSIONAL CONDUCT

11. All members of the Association are required to comply with the rules of Professional Conduct of the Association as published from time to time by the Board of Governors of this Association.

CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO, CODE OF ETHICS
AND RULES OF PROFESSIONAL CONDUCT (excerpts)

Introduction

This National Code of Ethics provides uniform rules and principles of professional conduct by which members of each provincial association will govern themselves in discharging their duties and responsibilities.

Any Ontario member who contravenes any of these rules and/or principles shall be accountable to the Board of Governors of the Certified General Accountants Association of Ontario

A Certified General Accountant shall always be mindful of his responsibility as a member of the Accounting profession, and shall carry on his work with fidelity to clients or employers, fairness to employees, and loyalty to the Association, in a manner worthy of a professional Accountant.

Definitions

In this Code, unless otherwise specifically stated, the following terms mean:

101 Member	An individual holding a Certified General Accountant certificate and in good standing.
102 The Association	National: The General Accountants Association; Provincial: The Certified General Accountants Association, or; The Professional Corporation of Certified General Accountants of Quebec (Quebec only).
103 The Profession	The profession of accountancy.
104 Opinion	The auditor's report which accompanies audited financial statements to which a member lends his name.
105 Accountant's Comments	Remarks accompanied by a disclaimer signed by, or identified with the accountant, which make it clear that he is not giving an opinion, where such remarks relate to unaudited financial statements.
106 Public Accounting	Providing professional services to the public.

Duties to the Public

A member:

201 Terms of Engagement	Shall state clearly to his client the nature and scope of services to be rendered under the terms of his engagement.
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202 Public Interest	Shall safeguard the interest of his client, employer and the general public.
203 Breach of Trust	Shall not breach the trust of a client or an employer.
204 Trust & Separate Bank Account	Shall, while holding funds or property in trust, keep the necessary records to show that the funds or property have been properly administered.
205 Expressing an Opinion	Shall not express an opinion on a financial report unless he has performed an adequate audit.
206 Opinion on Financial Reports	Shall issue an adverse opinion with reasons on any financial report whether for publication or not, if the report is prepared in a manner which might tend to be misleading.
207 Known Omission	Shall disclose in his auditor's report any material fact or information known to him which is not disclosed in a financial report, the omission of which would tend to make the financial report misleading.
208 Material Discrepancy	Shall immediately disclose any material discrepancy that becomes known to him concerning a financial report on which he has expressed an opinion, or rendered Accountant's Comments.
209 Restrictions	Shall give a denial of opinion with reasons on a financial report if his exceptions are sufficiently material to render his opinion contradictory and/or inconclusive.
211 Accountant's Comments	Shall, when submitting an accountant's comments with an unaudited financial statement, disclose on each page of such financial statement that it has been prepared without audit.
212 Sufficient Information	Shall not lend his name to any comments and/or recommendations concerning financial reports unless he has received all the information he requires to support such comments and/or recommendations.
213 Disclosure of Forecast	Shall make full disclosure that he does not vouch for the reliability of forecasts contingent upon future transactions.
214 Acknowledged Standards	Shall adhere to acknowledged standards of financial reporting unless departure from these standards is fully disclosed.
215 Right to Take Cognizance	Shall respect the right of any client, providing that his fee is paid, to have access to the documents in any record made by a member concerning his client, and to obtain copies of those documents.

Confidential Information

A member:

301 Secrecy	Shall preserve the secrecy of confidential information that becomes known to him in the practice of his profession.
302 Disclosure	Shall not divulge information concerning the business affairs of his employer or client without their consent, unless required to do so by law.

303
Discussion

Shall not discuss with another person the business affairs of his employer or client without his employer's or client's consent.

304
Information Used for
Personal Advantage

Shall not make use of confidential information relating to the business of his employer or client to directly or indirectly obtain a personal advantage, without his employer's or client's consent.

Duties to the Profession

A member:

401
Conduct

Shall always be mindful of his duties and responsibilities toward the profession, and on all occasions shall act in a manner which will enhance the image of the profession.

402
Compatible Activities

May engage in any profession, trade, industry, office or duty except where these undertakings are detrimental to the public good or to the standards of the profession.

403
Unlawful Activity

Shall not lend his name, himself, or his services to any activity which he knows, or which a reasonably prudent person would believe to be, unlawful.

404
Discredit

Shall not lend himself knowingly to any practice, pronouncement or act which would be of a nature to discredit the profession.

405
Procurement of Business

Shall not obtain business or a client through means detrimental to the profession.

406
Gift or Accounting
Books

Shall report to his Association any situation of which he has sufficient personal knowledge and which he thinks may be detrimental to the profession.

407
Criticism of Professional
Colleagues

Shall not criticize another professional colleague without first submitting his criticism to such other colleague for explanation. The member thereafter shall inform such colleague as to the action he has taken with regards to the criticism.

408
Legal Action Against
Professional Colleague

Shall, before entering into a legal action against another member, which might tend to bring the profession into disrepute, advise that member of his intention. He shall also give the Association as much notice as is possible of his intention, giving general details of the basis of the proposed action.

409
Discrimination

Shall not discriminate against a person because of the race, colour, sex, age, religion, national extraction or social origin of such person.

410
Specialization

Shall not use the title of specialist.

202 Public Interest	Shall safeguard the interest of his client, employer and the general public.
203 Breach of Trust	Shall not breach the trust of a client or an employer.
204 Trust & Separate Bank Account	Shall, while holding funds or property in trust, keep the necessary records to show that the funds or property have been properly administered.
205 Expressing an Opinion	Shall not express an opinion on a financial report unless he has performed an adequate audit.
206 Opinion on Financial Reports	Shall issue an adverse opinion with reasons on any financial report whether for publication or not, if the report is prepared in a manner which might tend to be misleading.
207 Known Omission	Shall disclose in his auditor's report any material fact or information known to him which is not disclosed in a financial report, the omission of which would tend to make the financial report misleading.
208 Material Discrepancy	Shall immediately disclose any material discrepancy that becomes known to him concerning a financial report on which he has expressed an opinion, or rendered Accountant's Comments.
209 Restrictions	Shall give a denial of opinion with reasons on a financial report if his exceptions are sufficiently material to render his opinion contradictory and/or inconclusive.
211 Accountant's Comments	Shall, when submitting an accountant's comments with an unaudited financial statement, disclose on each page of such financial statement that it has been prepared without audit.
212 Sufficient Information	Shall not lend his name to any comments and/or recommendations concerning financial reports unless he has received all the information he requires to support such comments and/or recommendations.
213 Disclosure of Forecast	Shall make full disclosure that he does not vouch for the reliability of forecasts contingent upon future transactions.
214 Acknowledged Standards	Shall adhere to acknowledged standards of financial reporting unless departure from these standards is fully disclosed.
215 Right to Take Cognizance	Shall respect the right of any client, providing that his fee is paid, to have access to the documents in any record made by a member concerning his client, and to obtain copies of those documents.

Confidential Information

A member:

301 Secrecy	Shall preserve the secrecy of confidential information that becomes known to him in the practice of his profession.
302 Disclosure	Shall not divulge information concerning the business affairs of his employer or client without their consent, unless required to do so by law.

303 Discussion	Shall not discuss with another person the business affairs of his employer or client without his employer's or client's consent.
304 Information Used for Personal Advantage	Shall not make use of confidential information relating to the business of his employer or client to directly or indirectly obtain a personal advantage, without his employer's or client's consent.
Duties to the Profession	
A member:	
401 Conduct	Shall always be mindful of his duties and responsibilities toward the profession, and on all occasions shall act in a manner which will enhance the image of the profession.
402 Compatible Activities	May engage in any profession, trade, industry, office or duty except where these undertakings are detrimental to the public good or to the standards of the profession.
403 Unlawful Activity	Shall not lend his name, himself, or his services to any activity which he knows, or which a reasonably prudent person would believe to be, unlawful.
404 Discredit	Shall not lend himself knowingly to any practice, pronouncement or act which would be of a nature to discredit the profession.
405 Procurement of Business	Shall not obtain business or a client through means detrimental to the profession.
406 Officer Accounting Body	Shall report to his Association any situation of which he has sufficient personal knowledge and which he thinks may be detrimental to the profession.
407 Criticism of Professional Colleagues	Shall not criticize another professional colleague without first submitting his criticism to such other colleague for explanation. The member thereafter shall inform such colleague as to the action he has taken with regards to the criticism.
408 Legal Action Against Professional Colleague	Shall, before entering into a legal action against another member, which might tend to bring the profession into disrepute, advise that member of his intention. He shall also give the Association as much notice as is possible of his intention, giving general details of the basis of the proposed action.
409 Discrimination	Shall not discriminate against a person because of the race, colour, sex, age, religion, national extraction or social origin of such person.
410 Specialization	Shall not use the title of specialist.

Duties to the Association

A member:

501
Certificate Obtained
Fraudulently

Shall notify the Association immediately when he is aware that a person has obtained certification by means of fraud or some other irregularity.

502
Admittance to
Membership

Shall report to the Association a fact known to him, sufficient to prevent the admittance of any person whose membership may be detrimental to the Association.

503
Reputation

Shall report a fact known to him which puts or seems to put in doubt the reputation of the Association.

504
Insolvency

Shall immediately notify the Association if he makes an assignment in bankruptcy.

505
Representation
or Request

Shall not initiate any representation or formulate any request to a public body or to a Government relating to the Association or the profession without the consent of the Association. This rule shall not apply to a member who is a civil servant or who is employed by the government of Canada, or by a province, and who is required to take part in such enactment, alteration, repeal or amendment by the terms of his employment.

Duties to Members

A member:

601
Integrity

Shall notify the Association of any known material fact which appears to put in doubt the integrity of a member.

602
Public Statement

Shall not make a public statement:

- (a) on the incompetence of another member of the Association;
- (b) detrimental to the reputation of another member of the Association.

603
Advancement

Shall not seek professional advancement through unfair means or conduct detrimental to another member of the Association.

604
Solicitation

Shall not directly or indirectly solicit the clients or the position of another member.

605
Employment offer

Shall inform a member of his intent to offer employment to an employee of this member. This restriction does not apply if the employee applies to a member on his own initiative or in response to a public advertisement.

606
Assistance to Students

Shall encourage and assist students in their professional development and in obtaining the experience and proficiency required for certification.

Duties of Members in Public Practice

A member:

701
Responsibility
and Control

Shall personally undertake, or delegate to a member of the Association, the charge and management of each public practice office maintained by him or his partnership.

702
Firm Name of a Sole
Proprietorship

Shall, when practising his profession as a Certified General Accountant as a sole proprietor do so only under his own name or the name of his predecessor who had practised as a Certified General Accountant adding or not after his firm's name "& Co." or a similar term. In the latter case, he shall make it clearly understood to the public that he is not practising in partnership with one or more persons.

703
Firm Name of
Partnership

Shall, when practising in a partnership of Certified General Accountants, ensure that the firm name consists of one or more names of the partners, former partners or predecessors who had practised as Certified General Accountants with or without the addition of "& Co." or similar term after the name.

704 Identification	Shall not indicate by way of a notation on letterhead, telephone listing, public advertisement or otherwise that he has an office in an area where he is only represented by another member, who in addition carries on a practice under his own name or a firm name.
705 Representing a Firm	Shall not indicate on his letterhead, telephone listing or elsewhere in his publicity that he maintains a branch of another firm of public accountants if he only represents that firm.
706 Partners Who Are Not Members of the Association	Shall practise in a partnership described as a firm of "Certified General Accountants" only if all the partners are members in good standing of the Association.
707 Person Expelled or Suspended	Shall obtain through the Association, the facts concerning the expulsion or suspension before knowingly employing a person who has been expelled or who is under suspension from any accounting body.
708 Services by an Employee	Shall not permit an employee to perform professional services which the member himself is not permitted to render.
709 Replacement	Shall, before accepting an appointment in which he replaces another professional accountant or firm, determine from such other person or firm whether there is any reason why such appointment should not be accepted.
710 Personal Practice when an Employee	Shall not undertake professional work for his own account without the consent of his employer.

Discipline

A member:

1001 and Clause	Shall be subject to disciplinary action for any offence which constitutes a breach of professional conduct.
1002 Application	Shall be subject to disciplinary action only through his Provincial Association.

APPENDIX V - ENGINEERS (A.P.E.O.)

THE PROFESSIONAL ENGINEERS ACT, R.S.O. 1970, c. 366 as am. by S.O.
1972, c. 45 (excerpts)

ASSOCIATION

3.—(1) The body politic and corporate known as the "Association of Professional Engineers of the Province of Ontario" incorporated under *The Professional Engineers Act, 1922* is hereby continued.

(2) All persons who were members of the Association on the 1st day of August, 1969 or who have been admitted as members since that day constitute the Association.

(3) The objects of the Association are,

- (a) to regulate the practice of professional engineering and to govern the profession in accordance with this Act, the regulations and the by-laws;
- (b) to establish and maintain standards of knowledge and skill among its members; and
- (c) to establish and maintain standards of professional ethics among its members,

in order that the public interest may be served and protected.
R.S.O. 1970, c. 366, s. 3 (1-3).

(4) The head office of the Association shall be in The Municipality of Metropolitan Toronto. 1972, c. 45, s. 1.

(5) The Association may purchase, acquire or take by gift, devise or bequest for the purposes of the Association and the furtherance of its objects, but for no other purposes or objects, any real or personal property, and may sell, mortgage, lease or otherwise dispose of any such property. R.S.O. 1970, c. 366, s. 3 (5).

COUNCIL

4.—(1) There shall be a council which shall consist of a president, a first vice-president, a second vice-president, an immediate past president, two elected councillors-at-large, ten elected regional councillors and five appointed councillors, all of whom shall be members and residents of Ontario.

(2) The president and the vice-presidents shall have such qualifications as are prescribed by by-law and shall be elected annually by vote of the members.

(3) One councillor-at-large shall be elected each year for a two-year term by vote of the members.

(4) There shall be elected from each of the five regions established and defined by by-law two regional councillors, one to be elected from each region each year for a two-year term by vote

7.—(1) The council may make regulations respecting any matter that is outside the scope of the power to pass by-laws specified in section 8 and, without limiting the generality of the foregoing,

- (a) prescribing the scope and conduct of examinations of candidates for registration;
- (b) prescribing the form of the summons referred to in subsection 10 of section 25;
- (c) respecting the practice and procedure for hearings held under this Act;
- (d) defining "professional misconduct" for the purpose of this Act and the regulations;

- (e) defining classes of specialists in the various fields of engineering;
 - (f) prescribing the qualifications required of specialists or any class thereof;
 - (g) providing for the designation of specialists upon application and examination or otherwise, for the suspension or revocation of such designations, and for the regulation and prohibition of the use of terms, titles or designations by professional engineers indicating specialization in any field of engineering;
 - (h) regulating and prohibiting the use of terms, titles or designations by professional engineers in independent practice.
- (2) No regulation is effective,
- (a) until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and it has been approved by a majority of those voting within the prescribed time; and
 - (b) until it has been approved by the Lieutenant Governor in Council. R.S.O. 1970, c. 366, s. 7.

9.—(1) The council shall prepare and publish from time to time a code of ethics containing standards of conduct designed for the protection of the public, which standards members and licensees must subscribe to and follow in the practice of professional engineering.

(2) Copies of the code of ethics shall be sent to the members and licensees and shall be available free of charge to members of the public who apply therefor. R.S.O. 1970, c. 366, s. 9.

PARTNERSHIPS, CORPORATIONS

20.—(1) No partnership, association of persons or corporation as such shall be a member or a licensee, or shall, except as authorized by this section, practise professional engineering.

(2) A partnership, association of persons or corporation that holds a certificate of authorization may, in its own name, practise professional engineering,

- (a) if one of its principal or customary functions is to engage in the practice of professional engineering; and
- (b) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or association of persons, or of a director or full-time employee of the corporation, as the case may be, who,
 - (i) is a member, or
 - (ii) is a licensee, in which case the practice of professional engineering shall be restricted to the work specified in the licence of the licensee.

(3) A partnership, association of persons or corporation that desires a certificate of authorization shall submit to the registrar an application in the prescribed form containing,

- (a) the names and addresses of all its partners, members, officers or directors, as the case may be;
- (b) the names of all its partners, members or associations of persons, directors of corporations, or full-time employees of corporations, as the case may be, who are the members or licensees who will be in charge of professional engineering on its behalf;

- (c) from among the names specified under clause *b* the name or names of its official representative or representatives whose duty it is to ensure that this Act, and the regulations and the by-laws are complied with by the partnership, the association of persons or the corporation, as the case may be,

and shall, whenever there is a change in the particulars given in its application, give notice of the change to the registrar within thirty days after the effective date of the change.

(4) If subsection 3 is complied with, the registrar shall issue to the applicant a certificate of authorization.

(5) Where the holder of a certificate of authorization ceases to have any official representative, the certificate is *ipso facto* revoked, and the partnership, association of persons or corporation shall not practise professional engineering until a new certificate of authorization is issued.

(6) Where the council finds that the holder of a certificate of authorization has failed to observe any of the provisions of this section or has been guilty of conduct that would, in the case of a member or licensee, have been professional misconduct, the council may reprimand the holder or suspend or revoke the certificate of authorization.

(7) Sections 24, 25 and 26 apply *mutatis mutandis* to the refusal to issue a certificate of authorization and to the revocation or suspension of a certificate of authorization. R.S.O. 1970, c. 366, s. 20

HEARINGS, DISCIPLINARY

25.—(1) Subject to subsection 2, where the council finds that a person who is a member or licensee is guilty of professional misconduct or has obtained registration as a member or has been issued a licence by reason of misrepresentation by such person, the council may by order do one or more of the following:

1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register.
2. Suspend the membership or licence of such person for such time as the council considers proper and direct that the reinstatement of such membership or licence on the termination of such suspension be subject to such conditions, if any, as the council considers proper.
3. Direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the council considers proper and that at the end of such period and upon the compliance with such terms any penalty be remitted.
4. Direct that the membership or licence of such person be cancelled and that the name of such person be removed from the register.
5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case.
6. Direct that, where it appears that the proceedings were unwarranted, such costs as to the council seem just be paid by the Association to the member or licensee whose conduct was the subject of such proceedings.

(2) The council shall not take any action under subsection 1 unless,

- (a) a complaint under oath has been filed with the registrar and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) the council has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so requests, has heard his evidence or evidence on his behalf and has reached the decision that he is guilty.

(3) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath.

(4) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence.

(5) Hearings shall be held *in camera*, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the registrar before the day fixed for the hearing, the council shall conduct the hearing in public or otherwise as it considers proper.

(6) The council may adjourn any hearing at any time and from time to time.

(7) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel or agent, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in subsection 10, but such person shall be advised of his right to object to answer any question under section 9 of *The Evidence Act* and section 5 of the *Canada Evidence Act*.

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by *The Evidence Act*.

(9) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of the council may take notice of generally recognized technical or scientific facts or opinions within the specialized knowledge of members of the council if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the material so noticed.

(10) The president, a vice-president, the immediate past president or the registrar may, and the registrar upon application of a person whose conduct is being investigated shall, issue a summons in the form prescribed by regulation, commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the council at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and

payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court

(11) If any person,

- (a) on being duly summoned to appear as a witness makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or
- (c) does any other thing which would, if the council had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

(12) At a hearing the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively, and to cross-examine the witnesses opposed in interest.

(13) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision.

(14) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection 2, any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, provided that documents and things received in evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has terminated.

(15) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Association, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient.

(16) Where a member or licensee has been suspended from practising under this section, he may, upon payment of all fees and other costs owing by him to the Association, apply to the council to be reinstated as a member or licensee, as the case may be, and the council may terminate the suspension of such member or licensee upon such terms as it considers proper.

(17) A person whose membership or licence has been cancelled under this section may apply to the council for membership or for a licence, as the case may be, and the council shall, subject to subsection 18, hear the application and make such order as it

considers proper and may include as a term of any such order such conditions as the council considers proper to be fulfilled before the applicant is admitted to membership or granted a licence or to be observed by such member or licensee thereafter.

(18) Except with the consent of the council, no application under subsection 17 shall be heard before the expiry of two years from the date of the cancellation of membership or licence or the date of the final disposition of any appeal.

(19) Upon a hearing for admission to membership or for the granting of a licence under subsection 17, the council shall follow, in so far as practicable, the procedure provided for in the case of a complaint under this section, and a former member or licensee has the same right of appeal from an order made by the council under subsection 17 as is provided in section 26.

(20) The council may appoint a committee to act for and on its behalf composed of not fewer than five members of the council, one of whom shall be the president, a vice-president or the immediate past president, and may delegate to the committee all or any of its powers and duties under this section upon such terms and conditions, if any, as the council considers proper, and a decision or order of the committee is the decision or order of the council.

(21) Except in the case of professional misconduct constituting incompetence on the part of the person whose conduct was investigated, the suspension or cancellation of the membership or licence of a person whose conduct was investigated under this section does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. — R.S.O. 1970, c. 366, s. 25

OFFENCES

27.—(1) Every person, other than a member or a licensee, who,

- (a) takes and uses orally or otherwise the title "Professional Engineer" or "Registered Professional Engineer" or uses any addition to or abbreviation of either such titles, or any word, name or designation that will lead to the belief that he is a professional engineer, a member or a licensee or, except as permitted by section 2, uses the title or designation "engineer" in such a manner as will lead to the belief that he is a professional engineer, a member or a licensee;
- (b) advertises, holds himself out, or conducts himself in any way or by any means as a member or a licensee; or
- (c) engages in the practice of professional engineering,

is guilty of an offence.

(3) Where a partnership, association of persons or corporation that has no subsisting certificate of authorization,

- (a) practices professional engineering;
- (b) uses orally or otherwise any name, title, description or designation that will lead to the belief that it is entitled to practice professional engineering; or
- (c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practise professional engineering.

every member of the partnership, every member of the association or persons, or the corporation and every director thereof, is guilty of an offence.

(4) Where a partnership, association of persons or corporation that has a subsisting certificate of authorization practises professional engineering in contravention of this Act, every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

(5) Every person, member of a partnership, member of an association of persons, and every corporation and director thereof, who is guilty of an offence under this section is on summary conviction liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both.

(6) No proceedings shall be commenced for a contravention of any of the provisions of this section after two years from the date of the commission of such contravention. R.S.O. 1970 c. 366, s. 27.

ASSOCIATION OF PROFESSIONAL ENGINEERS, BY-LAWS, REGULATIONS AND CODE OF ETHICS
(excerpts)

8. For the purposes of the Act and the regulations, "professional misconduct" means,
- (a) gross negligence;
 - (b) infamous, disgraceful or improper conduct in a professional respect, including any violation of the code of ethics prepared and published by the council pursuant to section 9 of the Act;
 - (c) incompetence;
 - (d) conviction of a serious criminal offence by a court of competent jurisdiction;
 - (e) continued breach of the regulations or by-laws of the Association. O. Reg. 449/69, s. 8.
9. For the purposes of section 8,
- (a) "gross negligence" means any act or omission in the carrying out of work of a professional engineer that shows a reckless or deliberate disregard of or indifference to the rights or safety of others;
 - (b) "incompetence" means lack of adequate knowledge of, or continued neglect or failure to exercise the ordinary skills of a professional engineer;
 - (c) "serious criminal offence" means
 - (i) any act committed in Canada that is punishable on indictment under the Criminal Code (Canada), and
 - (ii) any act that if committed in Canada would be punishable on indictment under the Criminal Code (Canada),but does not include any political offence committed outside Canada or any offence that does not affect the fitness of a professional engineer to practice his profession. O. Reg. 449/69, s. 9.

PRACTICE AND PROCEDURE FOR HEARINGS

10. Contents of Complaints and Particulars.
- (1) Every complaint filed under the provisions of subsection 2 of section 25 of the Act shall,
 - (a) contain a concise statement of the facts relevant to the complaint;
 - (b) if professional misconduct is alleged, specify the applicable clauses of sections 8 and 9 of Regulation 691 of Revised Regulations of Ontario, 1970 and any section of the Code of Ethics relied upon by the complainant;
 - (c) if misrepresentation is alleged, specify the respect in which the complaint is made;
 - (d) be divided into consecutively numbered paragraphs, each of which shall be confined as nearly as may be to a separate and distinct portion of the subject matter of the complaint;
 - (e) be endorsed with the name and address of the complainant or the complainant's solicitor to whom communications may be sent. O. Reg. 111/71, s. 2.
 - (2) The person whose conduct is being investigated may by a demand for particulars served upon the complainant and the registrar require the complainant to deliver such further and better particulars of the complaint as may be set forth in the demand for particulars. O. Reg. 111/71, s. 2.
 - (3) If the complainant has not served a reply to the demand for particulars served under section 2 not less than ten days prior to the date of the hearing, the person whose conduct is being investigated may apply at the commencement of the hearing for directions for particulars. O. Reg. 111/71, s. 3.
 - (4) Upon any application pursuant to section 3 or upon its own motion, the council may dismiss the complaint for lack of particularity or may direct the complainant to furnish such further and better particulars as in the opinion of the council may be required for the purposes of the hearing and may adjourn the hearing until such time as such particulars are delivered. O. Reg. 111/71, s. 4.
 - (5) If the complainant fails to comply with a direction for further and better particulars, the person whose conduct is being investigated may, after giving proper notice to the complainant, apply to the council for the dismissal of the complaint against him. O. Reg. 111/71, s. 5.
 - (6) Particulars delivered pursuant to a demand for particulars under section 2 or a direction of the council under section 4 shall form part of the complaint and shall be included in the record of the hearing. O. Reg. 111/71, s. 6.

COMMITTEES

82. The council shall appoint each year the following standing committees:

- (a) Executive;
- (b) Legislation;
- (c) Practice and Ethics;
- (d) Professional Development;
- (e) Consulting Practice;
- (f) Communications;
- (g) Employee-Engineers.

The council may also from time to time appoint such other committees consisting of members of the council or members of the Association as the council considers desirable to assist it in the management of the affairs of the Association.

- 83. (1) The president is ex officio a member of all committees.**
- (2) The vice-presidents and immediate past president are ex officio members of the standing committees.
 - (3) The first vice-president shall be the chairman of the Executive Committee.
 - (4) Subject to the provisions of the Act, the regulations and the by-laws, each committee shall select its own chairman and shall determine the manner in which meetings of the committee shall be convened and the procedure at meetings.
- 84. In addition to the members provided for in section 83, the standing committees shall be constituted as follows:**
- (a) the Executive Committee, of one regional councillor from each region, and one Councillor-at-large;
 - (b) the Legislation Committee, of two members of the council and three or more members of the Association appointed by the council;
 - (c) the Practice and Ethics Committee, of two members of the council and three or more members of the Association appointed by the council;
 - (d) the Professional Development Committee, of two members of the council, and three or more members of the Association appointed by the council;
 - (e) the Consulting Practice Committee, of one member of the council and four or more members of the Association appointed by the council;
 - (f) the Communications Committee, of one member of the council, and four or more members of the Association appointed by the council;
 - (g) the Employee-Engineers Committee, of one member of the council and four or more members of the Association appointed by the council.
- 87. The Practice and Ethics Committee shall:**
- (a) advise the council on all matters referred to it in connection with the practice and ethics of the profession;
 - (b) provide for informal investigation of any and all complaints referred to it or of any matter which it considers likely to affect the ethical practice of the profession;
 - (c) provide to the council or to members advice, assistance and interpretation in matters relating to differences, misunderstandings and alleged breaches of the code of ethics; and
 - (d) authorize the issuing of letters of warning, correction, advice or admonition, with the objective of forestalling or preventing actions or practices which might lead to formal complaints.

CODE OF ETHICS

GENERAL

1. A professional engineer owes certain duties to the public, to his employers, to his clients, to other members of his profession, and to himself, and shall act at all times with:
- (a) fairness and loyalty to his associates, employers, clients, subordinates and employees;
 - (b) fidelity to public needs; and
 - (c) devotion to high ideals of personal honour and professional integrity.

DUTY OF PROFESSIONAL ENGINEER TO THE PUBLIC

2. A professional engineer shall
- (a) regard his duty to public welfare as paramount;
 - (b) endeavour at all times to enhance the public regard for his profession by extending the public knowledge thereof and discouraging untrue, unfair or exaggerated statements with respect to professional engineering;
 - (c) not give opinions or make statements on professional engineering projects of public interest that are inspired or paid for by private interests unless he clearly discloses on whose behalf he is giving the opinions or making the statements.

- (d) not express publicly, or while he is serving as a witness before a court, commission or other tribunal, opinions on professional engineering matters that are not founded on adequate knowledge and honest conviction;
- (e) make effective provisions for the safety of life and health of a person who may be affected by the work for which he is responsible; and at all times shall act to correct or report any situation which he feels may endanger the safety or the welfare of the public;
- (f) make effective provision for meeting lawful standards, rules, or regulations relating to environmental control and protection, in connection with any work being undertaken by him or under his responsibility; and
- (g) sign or seal only those plans, specifications and reports actually made by him or under his personal supervision and direction.

DUTY OF PROFESSIONAL ENGINEER TO EMPLOYER

3. A professional engineer shall:

- (a) act in professional engineering matters for each employer as a faithful agent or trustee and shall regard as confidential any information obtained by him as to the business affairs, technical methods or processes of an employer and avoid or disclose any conflict of interest which might influence his actions or judgement;
- (b) present clearly to his employers the consequences to be expected from any deviations proposed in the work if his professional engineering judgement is overruled by non-technical authority in cases where he is responsible for the technical adequacy of professional engineering work;
- (c) have no interest, direct or indirect, in any materials, supplies or equipment used by his employer or in any persons or firms receiving contracts from his employer unless he informs his employer in advance of the nature of the interest;
- (d) not tender on competitive work upon which he may be acting as a professional engineer unless he first advises his employer;
- (e) not act as consulting engineer in respect of any work upon which he may be the contractor unless he first advises his employer; and
- (f) not accept compensation, financial or otherwise, for a particular service, from more than one person except with the full knowledge of all interested parties.

DUTY OF PROFESSIONAL ENGINEER IN INDEPENDENT PRACTICE TO CLIENT

4. A professional engineer in private practice, in addition to all other sections, shall:

- (a) disclose immediately any interest, direct or indirect, which might in any way be construed as prejudicial to his professional judgement in rendering service to his client;
- (b) if he is an employee-engineer and is contracting in his own name to perform professional engineering work for other than his employer, provide his client with a written statement of the nature of his status as an employee and the attendant limitations on his services to the client. In addition he shall satisfy himself that such work will not conflict with his duty to his employer;
- (c) carry out his work in full compliance with the appropriate Performance Standards for Professional Practice as may be published from time to time by the Association of Professional Engineers of Ontario;
- (d) carry out his work in accordance with applicable statutes, regulations, standards, codes, and by-laws; and
- (e) co-operate as necessary in working with such other professionals as may be engaged on a project.

DUTY OF PROFESSIONAL ENGINEER TO OTHER PROFESSIONAL ENGINEERS

5. A professional engineer shall:

- (a) conduct himself towards other professional engineers with courtesy and good faith;
- (b) not accept any engagement to review the work of another professional engineer for the same employer except with the knowledge of that engineer, or except where the connection of that engineer with the work has been terminated;
- (c) not maliciously injure the reputation or business of another professional engineer;
- (d) not attempt to gain an advantage over other members of his profession by paying or accepting a commission in securing professional engineering work;
- (e) not advertise in a misleading manner or in a manner injurious to the dignity of his profession, but shall seek to advertise by establishing a well-merited reputation for personal capability; and
- (f) give proper credit for engineering work, uphold the principle of adequate compensation for engineering work, provide opportunity for professional development and advancement of his associates and subordinates; and extend the effectiveness of the profession through the interchange of engineering information and experience.

DUTY OF PROFESSIONAL ENGINEER TO HIMSELF

6. A professional engineer shall:

- (a) maintain the honour and integrity of his profession and without fear or favour expose before the proper tribunals unprofessional or dishonest conduct by any other members of the profession; and
- (b) undertake only such work as he is competent to perform by virtue of his training and experience, and shall, where advisable, retain and co-operate with other professional engineers or specialists.

APPENDIX VI - ARCHITECTURE (O.A.A.)

THE ARCHITECTS ACT, R.S.O. 1970, c. 27 (excerpts)

10.—(1) The Board may make regulations,

- (d) for keeping a register of members of the Association and for issuing certificates of membership under the seal of the Association and calling in such certificates where membership lapses or is cancelled or suspended;
- (f) providing for the discipline and control of members of the Association, including provision for the signing or sealing of drawings and specifications prepared by members of the Association;
- (k) generally for the better carrying out of the powers vested in the Board.

(2) Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations,

- (a) providing for the investigation of any complaint that a member of the Association has been guilty of misconduct or incompetence, so as to render it desirable in the public interest that his membership be suspended or cancelled;
- (b) providing for the cancellation or suspension of the membership of any person found by the Board to be guilty of misconduct or incompetence and for the publication in the public press of notice of such cancellation or suspension and the reasons therefor;
- (c) providing the terms and conditions on which a member whose membership has been cancelled may in a proper case be restored to membership.

(3) A copy of every regulation made under this section shall be furnished to every member of the Association. R.S.O. 1960, c. 20, s. 12, *amended*.

11. The Council may pass by-laws,

- (b) instituting and furnishing means and facilities for the promotion of knowledge, proficiency and a high standard of ethics in all things relating to the practice of architecture;

- (h) generally for carrying out the objects of the Association in all matters other than those referred to in section 10, all of which are reserved for regulation by the Board. R.S.O. 1960, c. 20, s. 13.

13. It is the duty of each member of the Council to bring before it all complaints of misconduct or incompetence on the part of any member of the Association that may be brought to his attention and it is the duty of the Council to bring before the Board all such cases that in its opinion should be dealt with by the Board, but nothing herein prevents anyone from bringing before the Board any complaints of misconduct or incompetence on the part of any member of the Association. R.S.O. 1960, c. 20, s. 15.

16.—(1) Every person who, not being a member of the Association, or who, having been a member, has had his membership cancelled or is under suspension, or who, not being licensed under section 6, applies to himself the term "architect" alone or in combination with any other term, or who holds himself out as an architect, is guilty of an offence and on summary conviction is liable to a fine of not more than \$100 for a first offence and to a fine of not less than \$300 and not more than \$500 or to imprisonment for a term of not more than three months, or to both, for any subsequent offence.

17. In the investigation of a complaint against a member of the Association, the Board has all the powers that may be conferred on a commissioner under *The Public Inquiries Act*. R.S.O. 1960, c. 20, s. 19.

19.—(1) Anyone whose membership has been suspended or cancelled may, within fifteen days after the date of the order of suspension or cancellation, appeal to the Court of Appeal from such order, and the practice and procedure in such appeal shall be the same as upon an appeal from the judgment of a judge of the Supreme Court presiding at a trial and the Court of Appeal has power to confirm, vary, vacate or set aside such order or to make such other order as it considers just, and to make an order for payment of the costs of the appeal and there shall be no further or other appeal.

(2) Pending an appeal, the person whose membership is suspended or cancelled may continue to practise, but, unless the order of suspension or cancellation is set aside, he shall not practise after the appeal has been disposed of, except that, in the case of suspension, he may practise upon and after the expiry of the period of suspension. R.S.O. 1960, c. 20, s. 21.

ONTARIO ASSOCIATION OF ARCHITECTS, BY-LAWS (excerpts)

COMMITTEES

7. The Council may appoint such standing and special committees as it may consider necessary and assign duties, and responsibilities, membership and term of office therein as it deems fit.

ONTARIO ASSOCIATION OF ARCHITECTS, REGULATIONS OF THE REGISTRATION BOARD
(excerpts)

Firm Practice

- 33 (c) A member shall not continue to engage in the practice of architecture in partnership with a person whose membership has been cancelled or whose membership is under suspension.

Professional Conduct

34. A member shall adhere to The Architects Act, R.S.O. 1970 Chapter 27 and the Regulations and By-laws thereunder.
35. A member shall not be a party to any attempt to evade, circumvent or commit a breach of the provisions of The Architects Act, or of the Regulations; a member shall not enter into any arrangement by which anyone not a member may be enabled either directly or indirectly to practise architecture in Ontario.
38. A member shall not make use of services offered by manufacturers, suppliers of building materials, appliances and equipment, or contractors, which may be accompanied by an obligation detrimental to the best interest of his client.
40. A member shall represent truthfully to the public his prospective client and employer his qualifications and capabilities to perform services, and shall not continue in practice if, due to illness or disability, he is prevented from exercising his professional abilities and judgment.
41. A member shall hold in confidence all confidential information given to him by his client or employer.
46. A member shall reply promptly to any letter received from the secretary relating to the professional conduct of such member.
53. A member shall not injure, falsely or maliciously, the professional reputation, prospects or practice of another member.
56. A member shall not use self laudatory, exaggerated or misleading publicity but may present factual material, verbally or visually, which dignifies the profession or advances public knowledge of the architect's function in society.
59. A member shall perform with reasonable skill and good judgment professional services requiring the application of the art and science of architecture in the design, erection and completion of buildings in their entirety, and shall not knowingly contravene or attempt to contravene applicable building laws and regulations.

Complaints

61. At its discretion, the Board may suspend or cancel the membership of any member or licensee whom it finds guilty of misconduct or incompetence such as to render it desirable in the public interest that he should be so dealt with.
62. The Board shall not take any such action until after a complaint, setting forth the alleged misconduct or incompetence and giving reasonable particulars, has been made under oath and filed with the secretary of the Board.
63. (a) When a complaint is received, the secretary or the chairman or vice-chairman shall, within seven days thereafter, call a meeting of the Board to consider and act upon the complaint.
- (b) The meeting shall be held not earlier than fourteen days and not later than twenty-one days after the day on which the complaint was received.
- (c) The meeting may be adjourned from time to time.

64. (a) Notice of the meeting, with a copy of the complaint, shall be sent by registered mail to each member of the Board, to the member complained of, at his address shown in the register, and to the person making the complaint.
(b) The notice to the person making the complaint shall state that he may bring witnesses to substantiate his complaint and that, if he fails to attend the meeting, the matter may be dealt with in his absence.
65. The notice to the member complained of shall state that he will have an opportunity of submitting evidence and calling witnesses in his defence at the meeting and of examining opposing witnesses, and the notice to him shall state that, if he fails to attend, the Board may, in his absence, suspend or cancel his membership.
66. The member and any person complaining may be represented by counsel at the hearing of the complaint and the Board may call in a solicitor or a counsel for assistance and advice.
67. The Board may cause notice of any order of cancellation or suspension to be published in the public press and the reason therefor.
69. These regulations shall not limit the powers of the Board to apply sanctions for misconduct not specifically described.

PROPOSED NEW ARCHITECTS ACT (excerpts)

BOARD

10.- (1) The Registration Board of the Association is continued and, subject to the provisions of this Act and the regulations, shall govern the admission of persons to the Association, the right of persons to continue as members of the Association and to engage in the practice of architecture in Ontario and the discipline of members, and the Board shall consider the manner in which the members are discharging their professional responsibilities to the public. New.

(2) The Board shall be composed of,

- (a) one member of the Association to be appointed by each university, college or other body in Ontario that is by law authorized to grant degrees in architecture and that establishes and maintains to the satisfaction of the Board a faculty, school or department of architecture, provided that in no event shall the number of such appointees exceed two and if there be more than two such universities, colleges or other bodies in Ontario then such universities, colleges or other bodies shall make their appointment in rotation as determined by the Board and each member of the Board appointed under this clause shall hold office for a period of three years from the 1st day of January following his appointment;
- (b) one person who is a barrister and solicitor of at least ten years standing at the Bar of Ontario to be appointed by the Lieutenant

Governor in Council to hold office for a period of three years from the 1st day of January following his appointment;

- (c) a member of the public at large to be appointed by the Lieutenant Governor in Council to hold office for a period of three years from the 1st day of January following his appointment;
- (d) five members to be elected in accordance with the by-laws to hold office for three years from the 1st day of January following their election; and
- (e) the immediate past chairman of the Board ex officio, if the immediate past chairman is not appointed or elected to the Board. R.S.O.1970,c.27,s.8(1),amended.

(3) Any member of the Board not otherwise disqualified is eligible for reappointment or re-election at the expiration of his term, but a member of the Council elected to the Board shall resign his seat on the Council before taking his seat on the Board, and a member of the Board, while in office, is not eligible for election to the Council. R.S.O.1970,c.27,s.8(2).

(4) An elected member of the Board who has served two consecutive three-year terms is not eligible for re-election at the next succeeding election unless immediately prior to the end of his second consecutive term he was the chairman or vice-chairman of the Board.

(5) No elected member of the Board shall hold office consecutively as a member of the Board for more than three three-year terms.

(6) No person shall be appointed or elected to the Board unless he is a Canadian citizen and no person shall continue to hold such office if he ceases to be a Canadian citizen. New.

(7) Every vacancy on the Board caused by the death, resignation or incapacity to act of any member of the Board, if such member was appointed under clause a of subsection 2, shall be filled by the university, college or other body that appointed the dead, resigned or incapacitated member, and if such member was appointed under clause b or c of subsection 2, shall be filled by the Lieutenant Governor in Council, and if such member was elected under clause d of subsection 2, shall be filled by an election held for that purpose and a member of the Board appointed or elected to fill such a vacancy shall hold office only until the expiration of the term of the member so dead, resigned or incapacitated.

R.S.O.1970,c.27,s.8(3),amended.

(8) The administrative costs and expenses incurred by the Board shall be borne and paid by the Council from the funds of the Association. R.S.O.1970,c.27,s.12,part, amended.

DISCIPLINE

16.--(1) No disciplinary action under section 17 or 18 shall be taken unless,

- (a) a complaint under oath has been filed in the office of the secretary of the Board and a copy thereof has been served on the member, permit-holder or licensee whose conduct is being investigated;
- (b) the member, permit-holder or licensee whose conduct is being investigated has been served at least ten days before the date of the hearing with a notice of the time and place of the hearing; and
- (c) the Board has held a hearing, has heard evidence of or on behalf of the complainant and, if the member, permit-holder or licensee whose conduct is being investigated appears at the hearing and so requests, has heard his evidence and any evidence on his behalf and has reached the decision that he is guilty.
New.

(2) Notwithstanding anything in The Statutory Powers Procedure Act, 1971, hearings shall be held in camera, but if the member, permit-holder or licensee whose conduct is being investigated requests otherwise by a notice in writing delivered to the secretary of the Board before the day fixed for the hearing, the Board may conduct the hearing in public or otherwise as it considers proper.

(3) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of The Statutory Powers Procedure Act, 1971.

(4) There shall be a complaints committee of the Association whose members shall be appointed by the

Board but who shall not be members of the Board and the complaints committee shall, providing clause a of subsection 1 is complied with, or may, if it sees fit, make preliminary investigations and give initial consideration to complaints regarding the professional conduct of members, permit-holders and licensees and shall make a recommendation to the Board in each case as to whether or not the case is a proper one for a hearing by the Board.

(5) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative other than as members of the Board considering the referral of the matter to or from the complaints committee except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(6) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

(7) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(8) The member, permit-holder or licensee whose conduct is being investigated and the Association and such other persons as the Board may specify are parties to proceedings before the Board under this section.

(9) At a hearing, the complainant and the member, permit-holder or licensee whose conduct is being investigated have the right to examine the witnesses called by them respectively and to cross-examine the witnesses opposed in interest, including the deponent of an affidavit or statutory declaration submitted in evidence.

(10) A member, permit-holder or licensee whose conduct is being investigated who is a party to a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(11) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the Board within a reasonable time after the matter in issue has been finally determined.

(12) Except where otherwise provided, any notice, order, decision, reasons for decision or other document required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at his latest address appearing in the records of the Association and, where notice is served by registered mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date.

17. Where the Board, after a hearing, finds that a member, permit-holder or licensee is guilty of professional misconduct or has obtained registration as a member or has been issued a permit or a licence by reason of misrepresentation by such member, permit-holder, licensee or a director of the licensee, the Board may by order do one or more of the following:

1. Reprimand such member, permit-holder or licensee.
2. Suspend all the rights and privileges as a member, permit-holder or licensee of such member, permit-holder or licensee for such time as the Board directs in the order and direct that the reinstatement of such membership, permit or licence on the termination of the suspension be subject to such conditions, if any, as the Board considers proper.

3. Cancel the membership, permit or licence of such member, permit-holder or licensee and direct that the name of such member, permit-holder or licensee be struck off the register.

4. Direct that the order of the Board be published in detail or in summary in such manner or medium as the Board considers appropriate in any particular case.

New.

18. If a member or permit-holder has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by the Board incapable of engaging in the practice of architecture by reason of age, physical or mental illness including addiction to alcohol or a drug or any other cause, the Board may by order limit or suspend his rights and privileges as a member or permit-holder for such time and on such terms as it considers proper in the circumstances. New.

20. Where it appears that disciplinary proceedings against a member were unwarranted, the Board may order that such costs as it considers just be paid by the Association to the member whose conduct was the subject of the proceedings. New.

21.-(1) An applicant, member, permit-holder or licensee against whom an order or decision has been made by the Board under section 11, 13, 14, 15, 17, 18 or 19 may appeal from the order or decision to the Supreme Court in accordance with the rules of court.

(2) Upon the written request of any person entitled to appeal, the secretary of the Board shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence in dealing with and disposing of the matter complained of.

(3) Where notice of an appeal is served under this section, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision or order appealed from was made, which, together with a transcript of the oral evidence before the Board, if it is not part of the record of the Board, shall constitute the record in the appeal.

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm or reverse the decision or order of the Board or direct the Board to make any decision or order that the Board is authorized to make under this Act, and the court may substitute its opinion for that of the Board.

(5) The court may make such order as to the costs of the appeal as the court considers proper. R.S.O.1970,c.27,s.19(1) amended.

22. Except where a membership, permit or licence is cancelled or suspended for incompetence constituting professional misconduct, a cancellation or suspension does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S.O.1970,c.27,s.19(2),amended.

23. Where a person's membership is cancelled pursuant to section 17, he may apply, not more frequently than once in every twelve months, to be readmitted, and the Board after due inquiry may readmit him as a member or refuse to readmit him but if it refuses to readmit him the Board shall give reasons in writing therefor if requested by the person refused readmission. New.

24. Where the rights and privileges of a member are suspended for a definite or indefinite period, he may apply at any time to have his rights and privileges restored, and the Board after due inquiry may restore his rights and privileges as a member or refuse to restore his rights and privileges but if it refuses to restore his rights and privileges, the Board shall give reasons in writing therefor if requested by the member. New.

25. Upon the readmission of a person as a member or upon the termination of the suspension of the rights and privileges of a member or upon the reprimand of a member, the Board may impose upon him such terms and conditions as it considers proper. New.

REGULATIONS

29.--(1) The Board may make regulations,

(a) respecting any matter ancillary to the provisions of this Act with regard to,

- (i) the admission and registration of members,
- (ii) the issuing and recalling of certificates of membership and seals,
- (iii) the keeping of registers of members, honorary members, associate members, student associate members, retired members, permit-holders and licensees,
- (iv) the issuing and recalling of permits,
- (v) the issuing and recalling of licences,
- (vi) the conduct and discipline of members, permit-holders and licensees,
- (vii) the suspension and restoration of the rights and privileges of members, permit-holders and licensees,
- (viii) the cancellation of memberships, permits and licences,
- (ix) the resignation of members, and
- (x) the readmission of former members;

- (b) respecting the classification and admission of honorary members, associate members, student associate members and retired members and respecting the rights, privileges and duties of honorary members, associate members, student associate members and retired members;
 - (c) respecting courses of study, practical training and examinations for admission of members, the fees therefor, and exemptions from such courses of study, practical training and examinations;
 - (d) respecting the signing, sealing, stamping and use by members, permit-holders and licensees of plans, sketches, drawings, specifications and reports prepared by members, permit-holders or licensees;
 - (e) prescribing the fees to be paid on admission and readmission of members to the Association;
 - (f) defining "professional misconduct" for the purpose of this Act and the regulations;
 - (g) prescribing the extent to which the beneficial ownership of the shares of corporations must be held by members in order that licences may be issued to and retained by corporations;
 - (h) prescribing the fees to be paid on applications for permits and licences;
 - (i) prescribing forms for the purposes of this Act and providing for their use;
 - (j) for the election of a chairman and vice-chairman and the appointment of a secretary and such other officers of the Board as it desires and for prescribing their duties and respecting the holding and conduct of meetings of the Board and for fixing the quorum of the Board;
 - (k) generally for the carrying out of the functions of the Board. R.S.O.1970,c.27,s.10(1),amended.
- (2) No regulation is effective until,
- (a) it has been submitted to the members of the Association for approval by means of a mailed secret ballot returnable within thirty days

after the mailing thereof and it has been approved by a majority of those voting within such time; and

- (b) it has been approved by the Lieutenant Governor in Council. New.

CODE OF ETHICS

30.-(1) The Board shall prepare and publish from time to time a code of ethics containing standards of professional conduct designed for the protection of the public, which standards members, licensees and permit-holders must subscribe to and follow in the practice of architecture.

(2) Copies of the code of ethics shall be sent to the members, licensees and permit-holders and shall be available free of charge to members of the public who apply therefor. New.

THE ONTARIO ASSOCIATION OF ARCHITECTS, PROPOSED NEW REGULATIONS (excerpts)

Professional Misconduct

20. For the purposes of the Act and the regulations, "professional misconduct" means,

- (a) gross negligence;
- (b) infamous, disgraceful or improper conduct in a professional respect, including any violation of the code of ethics prepared and published by the Board pursuant to section 30 of the Act;
- (c) incompetence;
- (d) conviction of a serious criminal offence by a court of competent jurisdiction;
- (e) breach of any provision of the Act or this Regulation.

21. For the purposes of section 20,

- (a) "gross negligence" means any act or omission in engaging in the practice of architecture that shows a reckless or deliberate disregard of or indifference to the rights or safety of others;
adequate knowledge of, or continued neglect or failure to exercise, the ordinary skills of an architect;
- (c) "serious criminal offence" means,
 - (i) any act committed in Canada that is punishable on indictment under the Criminal Code (Canada), and

- (ii) any act that if committed in Canada would be punishable on indictment under the Criminal Code (Canada),

but does not include any political offence committed outside Canada or any offence that does not affect the fitness of an architect to practise his profession.

Firm Practice

22.-(1) In this section, "firm" means,

- (a) a partnership in which a member or licensee is a partner and engages in the practice of architecture; or
- (b) a corporation that is a licensee.

(2) A member or licensee shall not engage in the practice of architecture in partnership with a person who is not a member or licensee except where,

- (a) such person is a member or licensee of the Association of Professional Engineers of Ontario or an approved allied profession;
- (b) the partnership's architectural services are performed under the responsibility and supervision of the member.

(3) A member or licensee shall not continue to engage in the practice of architecture in partnership with a person whose membership or licence has been cancelled or whose membership or licence is under suspension.

APPENDIX VII - SPECIMEN MEMORANDUM TO O.A.A. MEMBERSHIP

A complaint of misconduct was made against Richard Peter G. Pennington and Robert J. Posliff, both members of the Ontario Association of Architects, by affidavit of Brian Parks, the Executive Director of the Association, sworn on the 10th day of June, 1977. The affidavit contains four charges of misconduct as follows:

- "(a) As members of the Ontario Association of Architects copied the work of another member, contrary to Section 54 of the Regulations of the Registration Board of the Ontario Association of Architects passed pursuant to the provisions of The Architects Act, R.S.O. 1970, Ch. 27.
- (b) As members of the Ontario Association of Architects passed off the work of another member as their own, contrary to Section 54 of the Ontario Association of Architects passed pursuant to the provisions of The Architects Act, R.S.O. 1970, Ch. 27.
- (c) As members of the Ontario Association of Architects copied the drawings of another member, contrary to Section 69 of the Regulations of the Registration Board of the Ontario Association of Architects passed pursuant to the provisions of The Architects Act, R.S.O. 1970, Ch. 27.

- (d) As members of the Ontario Association of Architects passed off the drawings of another member as their own, contrary to Section 69 of the Regulations of the Registration Board of the Ontario Association of Architects passed pursuant to the provisions of The Architects Act, R.S.O. 1970, Ch. 27.

At the hearing, Mr. Parks was called as a witness and gave evidence as to the proceedings which took place with respect to this matter before the Professional Conduct Committee of the Association. Messrs. Pennington and Posliff attended before that Committee voluntarily and provided information to it concerning the matter in question.

Following those proceedings, the present disciplinary proceedings were instituted by Mr. Parks, in his capacity as Executive Director, swearing the above mentioned affidavit of complaint which was then filed pursuant to Regulation 62 with himself in his capacity as Secretary of the Registration Board. A Notice of Hearing together with a copy of the complaint was then delivered to Messrs. Pennington and Posliff and to each of the members of the Board pursuant to Regulation 63.

Following the conclusion of the evidence for the complainant, Mr. Fleming on behalf of the two members charged made a motion for dismissal of the complaint on the ground that the complaint was not made in accordance with the regulations in that Mr. Parks being the Secretary of the Board ought not to have sworn and filed the complaint in his capacity as Executive Director of the Association. As the Board understands Mr. Fleming's argument, it was that the procedure adopted in initiating the complaint had the appearance of impropriety because of the dual capacities in which Mr. Parks acted. Mr. Fleming contended that the effect of what was done deprived the Board of jurisdiction to hear this matter.

The Board concludes that there was no breach of the regulations or of The Architects Act by the procedure followed by Mr. Parks and that the Board's jurisdiction to hear this matter has not been affected by the procedure adopted. The Board concludes that Mr. Parks was entitled to file the complaint as a person coming within the definition of "anyone" in section 13 of the Act,

The procedures followed by the Council in placing these charges of misconduct before this Board for hearing were established several years ago. While it is correct that Mr. Parks occupies the office of Secretary of the Board,

on disciplinary matters he performs no function as Secretary except to convene a meeting of the Board. Under the practice adopted and followed in this case, members of the Board receive no information concerning the matter prior to the hearing except the Notice of Hearing and the sworn complaint. Mr. Parks of course does not participate in any way in the Board's deliberations.

It appears to the Board that as a practical matter, it is appropriate that in disciplinary proceedings Mr. Parks be the formal complainant. In doing so, he is merely carrying out the instructions of the Council of the Association. Without any personal interest in the proceedings, he is able to avoid the type of recrimination which a member such as a member of the Professional Conduct Committee might be exposed to should such member be the complainant.

With the agreement of counsel, the Board reserved its decision on Mr. Fleming's motion. For the reasons set forth above, the Board dismisses the motion.

The evidence is that the architectural firm of Sheldon D. Rosen, Architects and Planners has been retained to provide architectural control criteria for the subdivision development for residential dwellings of a tract of land at Heart Lake, Brampton, known as Villages of Heart Lake. Various members of the firm (hereinafter called "SDR") also sat from time to time as the architectural member of the Architectural Control Committee, which together with a member of the Brampton Planning Department and a member of the subdivider, passed on the architectural design of all buildings to be erected within the subdivision.

Finally, SDR had itself been retained by some builders to design semi-detached houses to be constructed on various locations within the subdivision including The Hilwood Group for whom drawings marked on this hearing as Exhibit 8 were prepared.

On October 19, 1976, following an initial contact on October 17, 1976, Sheldon D. Rosen, the principal of SDR, and his associate, David Wooldridge, both members of the Association, met with one Marrissee, the President of a building company then known as 34189 Ontario Limited and subsequently renamed The Oster Lane Group, to discuss an engagement for the design of semi-detached houses for a number of lots owned by The Oster Lane Group in phase 3 of the Heart Lake Villages subdivision. The evidence is contradictory as to which of the parties first approached the other. Nevertheless, following some negotiations, Marrissee decided not to retain the SDR firm.

Marrisse testified that prior to his meeting with SDR, he had already been negotiating with the firm of Pennington and Posliff Architects and following his discussion with SDR, decided to retain the Pennington Posliff firm with respect to the project. He had worked with that firm on prior occasions.

Marrisse brought in to Pennington and Posliff a set of the drawings, Exhibit 8, which had been prepared for The Hilwood Group by SDR. He testified that the drawings probably came into his possession through a masonry company with which he was associated which was doing construction work in the Heart Lake development. He told Pennington that he wanted houses of the same design because they apparently were selling well.

Pennington testified that Marrisse brought in SDR plans and said he wanted plans for semi-detached houses like them. Pennington told him he should then engage SDR but got the impression that Marrisse was not prepared to do so. Accordingly, Pennington agreed that his firm would take the matter on. He told Marrisse he would have to change the drawings. He said he told Marrisse that plans prepared by his office could be similar but could not be the same as SDR's drawings. He testified it was a matter of judgement on his part as to how much the drawings had to be changed in order not to violate the work of SDR.

Pennington gave the SDR plans to his senior draftsman, John Roach, and instructed him as to changes to be made in order to both satisfy the client and not violate the SDR drawings. He described the SDR floor plan as a very standard type of floor plan and went on to describe to the Board the changes from the SDR plans which were made by Roach under his direction.

Posliff was also involved in the preparation of the plans for The Oster Lane Group and from time to time provided Roach with instructions as to changes to be made. While it was claimed that during the course of the preparation of the plans many sketches had been prepared, only two sketches were produced at the hearing. Neither appeared to have much to do with the plans in issue. Furthermore, there was no evidence of Roach being supplied with anything more than the SDR drawings when he commenced the work.

A copy of the drawings produced by Pennington and Posliff (Exhibit 6) were received by Rosen on January 28, 1977, apparently in his capacity as a member of the Architectural Control Committee. He immediately telephoned Posliff and accused him of copying SDR drawings. Posliff denied the allegation.

The evidence of John Roach was that he had been an architectural draftsman for 14 years and had been in the employ of the Pennington firm for 11 years. He said that the drawings, Exhibit 6, had been prepared by him as draftsman with input from Posliff. He said he was given a copy of SDR's drawings, Exhibit 8, which he used for general sheet layout and basic plan layout. He said that he cut out the Rosen floor plans and sections and arranged them on his drafting board according to his paper size. (It is to be noted that on Exhibit 10, a mounted copy of Exhibit 6(e), the sections are shown at the top of the sheet and the floor plans at the bottom of the sheet, whereas in Exhibit 9, a mounted copy of drawing 6 of Exhibit 8, the position is reversed). He testified that he made a light line layout of the exterior and interior walls of each diagram. He agreed that to that extent, Exhibit 10 was traced from Exhibit 9, that Exhibit 6(b) was traced from Exhibit 8 drawing 12, and that Exhibit 6(d) was traced from Exhibit 8 drawing 9. He also agreed that the dimensions used by him came from the SDR drawings, although he claimed it was coincidence that many dimension lines were in the same location on his drawings. Finally, he admitted copying with insignificant changes substantial portions of the general notes on Exhibit 8.

Both Pennington and Posliff denied knowing that Roach had traced the SDR drawings and denied ordering him to do so, although both admitted they were fully aware that he was using the SDR drawings as a model for his work.

Evidence was led on behalf of the complainant of the appearance of ghost lines on some of the Pennington and Posliff drawings in the same position as existing lines on the SDR drawings. Ghosting was described as the incomplete erasure of lines on a drawing. Errors on the SDR drawings were also carried forward onto the Pennington and Posliff drawings.

Significant evidence was given by Ralph M. Goldman, a member of the Association, who identified two sets of drawings, Exhibits 16 and 17, which had been prepared by his firm a considerable time before the preparation of the SDR drawings. The drawings, Exhibit 17, had in fact been prepared for The Hilwood Group for a project in Mississauga. Goldman testified that Exhibits 16 and 17 had been conceived by him and developed over a number of years. He described Exhibit 17 as very standard plans, of a kind which he sees all the time. In making a design comparison of his plans with those of SDR and Pennington and Posliff with respect to one particular building, he testified that his plans had no similarity in elevations but that the ground floor plan of the SDR drawing was more similar to his than to the

Pennington and Posliff plan, and the basement plan was very similar in all cases. The SDR upper floor plan was more similar to the Pennington and Posliff plan than to his.

Both Wooldridge and Rosen testified that Exhibit 8 had been specifically prepared from design and other parameters provided by The Hilwood Group and also reflected modifications made at the request of the client from time to time. Specifically, Rosen testified that the drawings were the result of the skill and ingenuity of his firm developed over the years and that the only material used in the preparation of the drawings was material owned by his firm or in which he had copyright. Woolridge claimed authorship for the notes which he testified had been developed by him over the years. Finally, both denied obtaining any assistance from Goldman's drawings, Exhibits 16 and 17, although neither denied the possibility of having seen those drawings before preparing Exhibit 8.

It is the finding of the Board that Pennington and Posliff, through their senior draftsman, Roach, did copy substantial portions of the SDR drawings, Exhibit 8. It is the Board's opinion that whether or not Pennington and Posliff were aware that portions of the drawings were traced, they were certainly aware and it was their intention that the drawings were to be copied with changes afterwards being made which in their opinion differentiated them from Exhibit 8.

The Board doubts Rosen's claim that the original architectural design of the plans in question came solely from his office. The design is a common type and at least one other architect, Goldman, had developed essentially the same floor plan several years earlier for The Hilwood Group, the same client for whom Mr. Rosen claimed he originated the same concept. However, the Board is satisfied that in preparing Exhibit 8, the SDR firm did exercise mental effort, labour and skill to develop the compilation evidenced by Exhibit 8.

Notwithstanding the fact that similar plans of this type had been in existence for many years prior to the preparation of Exhibit 8, and notwithstanding the design criteria established by SDR for the Architectural Control Committee which severely limited architectural freedom, the Board is satisfied on the evidence that Pennington and Posliff did not rely upon a common source of information for preparation of Exhibit 6 but instead merely copied Exhibit 8, making only as many changes as they thought necessary to avoid a breach of Regulation 54. However, it is the Board's decision that Exhibit 6 is in substantial respects a copy of Exhibit 8.

The Board therefore finds that Messrs. Pennington and Posliff are guilty of the charge contained in paragraph 5(a) of the complaint.

Having found that Messrs. Pennington and Posliff in preparing Exhibit 6 substantially copied Exhibit 8, the work of SDR, and having placed their seal on Exhibit 6 and circulated it, the Board is driven to the inescapable conclusion that in doing so, they passed off the work of SDR as their own notwithstanding the changes which they effected to Exhibit 6. The Board therefore finds Messrs. Pennington and Posliff guilty on the charge outlined in paragraph 5(b) of the complaint.

Counsel for the complainant advised the Board that charges 5(c) and 5(d) were included in the complaint to cover the possibility of the Board deciding that "work" in Regulation 54 did not include the preparation of architectural plans. In view of the Board's decision that architectural plans such as Exhibit 8 are included within the definition of "work" in Regulation 54, the charges contained in paragraphs 5(c) and 5(d) of the complaint are hereby dismissed.

REASONS CONCERNING PENALTY

This is the first occasion upon which a complaint has been heard by the Board concerning a breach of Regulation 54. The Board considers the copying of a member of another member's work to be a matter of serious concern, while at the same time, it recognizes that in each case the seriousness of the offence must be weighed against the extent of the copying which occurred and the nature of the work copied.

While the Board found the members guilty of two breaches of Regulation 54, a penalty in itself, the Board does not consider the facts of this case justify the more serious penalty of suspension or cancellation, nor would the public interest be served thereby.

The Board, however, orders that a copy of its Reasons for Decision and the Reasons concerning Penalty be provided to the membership of the Association upon this decision becoming final.¹⁵³

APPENDIX VIII - INTERIM REPORTS OF COLLEGE OF PHYSICIANS
AND SURGEONS OF ONTARIO

(excerpts)

INTERIM REPORT, February, 1977 (excerpts)

*The College of Physicians
and Surgeons of Ontario*
**REGISTRATION
STATISTICS**
at December 31, 1976

NUMBER OF MEMBERS
ON THE REGISTER

December 31, 1971	12,558
December 31, 1972	13,340
December 31, 1973	13,932
December 31, 1974	14,472
December 31, 1975	14,951
December 31, 1976	15,461

Table I

REGISTRATIONS IN ONTARIO 1971-1976

Year	Graduates from Canadian Universities	Graduates from U.K., Australia, N.Z., S.A.	Graduates from Universities in U.S.A.	Graduates from Other Universities	Learned without having sat the M.C.C. Exams	Total
1971	500	203	20	229		952
1972	523	227	20	264		1024
1973	529	177	22	167		895
1974	513	192	15	154		874
1975	513	193	14	116		836
1976	552	157	25	139		873

REGISTRATIONS BY SOURCE OF MEDICAL EDUCATION

Table II

Year	Ontario		Other Provinces		U.K. and Ireland		Aust. and U.S.A.		Other Countries		Total
	G.P.	Spec.	G.P.	Spec.	G.P.	Spec.	G.P.	Spec.	G.P.	Spec.	
1971	332	10	136	22	161	16	45	1	172	57	952
1972	349	10	143	21	174	27	40	6	166	88	1024
1973	385	17	111	16	129	20	43	7	121	46	895
1974	399	3	96	15	151	12	43	1	130	24	874
1975	378	10	112	13	164	10	32	1	91	25	836
1976	432	6	106	8	117	9	50	6	109	30	873

Table III

ERASURES

Year	DEATH		RETIREMENT				FOR DUES		FOR CAUSE		Total
	G P	Spec	In Ontario G P	Spec	Out of Ontario G P	Spec	G P	Spec	G P	Spec	
1971	48	30	21	13	73	44	46	22	1	0	301
1972	49	39	31	10	94	54	20	9	3	3	312
1973	59	55	45	15	77	80	24	10	1	2	368
1974	39	38	37	20	141	78	35	21	0	1	410
1975	53	42	41	19	122	79	43	12	2	2	415
1976	64	44	49	23	111	74	42	27	2	0	436

Table IV

GAIN OR LOSS

Year	New Registrations	By Registrations	Erasures	Net gain (Loss)
1971	952	79	301	730
1972	1024	70	312	782
1973	895	65	368	592
1974	874	76	410	540
1975	836	58	415	479
1976	873	73	436	510

Table V

REGISTRATIONS ON THE SPECIAL REGISTER

Year	Classification						Total
	Academic Licence	Temporary Licence	Public Service Licence	Under service Area Licence	Hospital Practice Licence	Specified Licence	
1976 New							
Registrations	22	66	20	14	15	0	137
Renewals	138	179	65	124	51	70	627
TOTAL	160	245	85	138	66	70	764
Resignations	14	195	11	13	11	22	266
TOTAL	146	50	74	125	55	48	498

POLICY RE: DISCIPLINE PROCEEDINGS, p. 5

The Council clarified its intent with respect to three areas in respect to discipline committee proceedings

- (1) The Discipline Committee will be scheduled on an as-sizes basis, with week-long meetings in the first week of February, April, June, October and December of each year, with additional sittings to be arranged as required.
- (2) The College made a statement of policy that no agreements with respect to plea bargaining in cases before the Discipline Committee will be considered by the College
- (3) The College will publish the names of all physicians found guilty of professional misconduct by the Discipline Committee unless a specific direction to the contrary in an individual case is given by the Discipline Committee at the time of determination of the penalty.

Complaints Committee Activities, p. 5

It is now eighteen months since the promulgation of the Health Disciplines Act and preliminary assessment of the impact of this Act on the Complaints Committee may now be attempted.

There is no question that there has been a significant increase in the number of complaints and inquiries being received by the College. Evidence of this may be seen in 1975 there were 68 complaints that were considered by the Complaints Committee, subsequent to July, 1975, while in the first ten months of 1976 there were 234. Of these, 162 cases (69%) were dismissed, 45 cases (19%) were dismissed with admonishment, caution, warning or suggestion, 19 cases (8%) were referred to Discipline, 4 cases (2%) were referred elsewhere, and 4 cases (2%) were deferred.

The Health Disciplines Board, up until November 12, 1976 had had 79 cases referred for consideration of complaints dismissed by the Committee. Of the 42 cases on which a decision has been received by the College, the Board confirmed the decision of the Complaints Committee in 34 cases (81%), while 8 cases (19%) were referred back to the College for further consideration.

Of these cases, the original motion was reaffirmed in 4, one was referred to the Executive Committee, one to the Discipline and two were deferred pending the receipt of further information.

Certain grounds for complaint tend to recur, and among those most frequently received are

- Concerned with breaches of confidentiality with special reference to a marriage counselling situation. When both spouses attend a physician for such counselling, one or other may cease to attend. At a later date, if separation or divorce proceedings are instituted, the doctor may be asked for a medical report by the solicitor of the spouse who has continued as his patient. Should he, in his report, provide information he had obtained when the other spouse attended him as a patient, it is almost sure to result in a complaint being lodged with the College. Under such circumstances, it is suggested that no report be provided without the written consent of both spouses.
- Lack of adequate explanation of a proposed method of treatment, the results to be anticipated, and the expected period of disability.
- Lack of communication between doctor and patient, or patient's family, regarding a patient's progress, especially in cases not progressing favourably.
- Failure on the part of the physician and/or members of his office staff, to provide an appropriate, courteous explanation for delayed or cancelled appointments, delay in provision of medical reports, and providing summaries or transcripts of a patient's records to another physician.
- Failure to respond in a reasonable time to a lawyer's request for a medico-legal report on behalf of a patient.
- Failure to provide in a reasonable time, reports required by the Workmen's Compensation Board.

- Failure to notify a patient, in advance of the treatment being rendered, of the amount of the fee to be charged in excess of the O.M.A. Schedule of Fees.
- Failure to notify patients of a doctor's policy regarding his charges for missed appointments and then charging for such a missed appointment.
- Problems relating to group practices, either in partnership, expense-sharing arrangements, or assistantships, when one or more members elect to leave such a group, in which specific written agreements have not initially been drawn up with regard to financial matters and ownership of patients' records.

There are some of the problems frequently brought to the attention of the College and it may be seen that most of them involve a failure in communication.

Traditionally, the College has not acted in the role of mediator between disputants. It may be noted, however, that of the 304 complaints received between January 1, 1976 and November 12, 1976, 102 cases (40%) were resolved within the Complaints Department and 148 cases (60%) had to be reviewed by the Committee. In addition, 237 communications were received and labelled as inquiries, many of which might have become complaints unless the College had been able to provide a satisfactory explanation.

The role of the Complaints or Mediation Committees of local Academies of Medicine and Clinical Societies was discussed at a special meeting of the Ontario Medical Association at its annual meeting in the Spring of 1976. The College feels that many complaints may best be dealt with at the local level, but it must be stated that it is not possible for a complaint, once brought to the attention of the College, to be referred back to a local society. On the other hand, if a Clinical Society or Academy of Medicine feels that it is unable to resolve a problem, it is quite proper for it to refer it to the College for appropriate investigation.

CARDIOPULMONARY RESUSCITATION

The College has endorsed and encouraged the establishment and promotion of a training and certification program in cardiopulmonary resuscitation by the Ontario Heart Foundation and the Ontario Medical Association. Having received and reviewed the report and recommendations of the OHF-OMA Joint Committee, the Committee on Special Procedures also recommended, and the Council approved, basic life support cardiopulmonary resuscitation as a first aid procedure. Individuals performing basic life support procedures, will therefore, not be engaged in the practice of medicine under the provisions of Section 52 of the Health Disciplines Act, 1974.

Basic life support includes the recognition of an airway obstruction, respiratory arrest and cardiac arrest, the opening and maintaining of a patent airway, and providing artificial circulation by means of external cardiac compression. Basic life support does not include the use of intravenous fluids, drugs, and defibrillation.

Report of the Discipline Committee, p. 7

1. Dr. Yat Tung Tse

Dr. Tse was charged with professional misconduct in that it was alleged that in the years 1974 and 1975 or a part thereof, he referred a number of patients to ABKO Medical Laboratories Limited in return for which he accepted money and/or other valuable consideration which was paid by the laboratory, all of which, having regard to all the circumstances existing herein, constituted professional misconduct.

Dr. Tse attended, represented by counsel and pleaded not guilty.

In this case, a Statement of Facts as agreed upon was presented by counsel in which Dr. Tse admitted referring patients to the laboratory during the period in question, he admitted that his referrals enabled the laboratory to bill OHIP in 1974 about \$20,000.00 and in the first 9 months of 1975 a little in excess of \$13,000.00. Dr. Tse also admitted that in April 1974 ABKC paid to him by cheque the sum of \$1,000.00 and that in the year 1975 ABKO paid on his behalf a gardening bill of \$76.00 with respect to the residence of his alleged former wife, that ABKO paid to Surgo Surgical Supply \$91.90, that the lab paid to Sands Pharmaceuticals the sum of \$57.50, that the lab paid to Anca Laboratories \$180.00, that the lab paid to The Maritime Life Assurance Company a premium payment of \$376.29, that the lab paid to Star Fuels the sum of \$1,525.79 with respect to fuel oil delivered to an apartment building at 122 Dowling Avenue, Toronto, which was owned by a company in which Dr. Tse was a principal shareholder, and that all of these cheques were recorded in the books of the lab under a section entitled "Advertising and Promotion Expenses". The bookkeeper of the lab, who was called as a witness for the College, testified that the lab credited to the account of Dr. Tse 15% of whatever revenue his patients generated to the lab for each month and that Dr. Tse was well aware of these credits.

In defence, Dr. Tse stated that in April of 1974 he had paid to the lab the sum of \$1,700.00. On cross-examination, his evidence was not clear as to whether this \$1,700.00 payment was in repayment of two cheques paid by the lab to him in 1973, one being for \$1,000.00 and the other being for \$700.00, or whether this was repayment of \$1,000.00 that the lab had paid to him earlier in 1974 plus \$700.00 for medical supplies that the lab had acquired on Dr. Tse's behalf or whether this cheque represented a payment on a condominium project that the principals of the lab were endeavouring to develop. In general, Dr. Tse's evidence on cross-examination was very evasive and he endeavoured to show that all of the monies that had been paid on his behalf had in fact been repaid to the laboratory and indeed there was evidence to the effect that in March of this year, Dr. Tse had given a cheque to the lab and the company in which he had an interest had also given a cheque to the lab, which mathematically would balance all payments that the laboratory had theretofore made on

Dr. Tse's behalf. These latter payments upon examination however were indeed suspect and it appeared as though Dr. Tse was endeavouring to put himself back in good standing by the delivery over of those cheques.

In substance, Dr. Tse took the position that all payments that the lab had made on his behalf were in the nature of a loan, that he was hardpressed for money at the time and that Mr. Abersek of the lab had agreed to make these payments on Dr. Tse's behalf. It transpired on cross-examination however that there was no evidence of a loan, aside from Dr. Tse's statements which were not corroborated by any other witness and the transaction had none of the earmarks of a loan inasmuch as there was no promissory note, no agreement that interest should be paid, no acknowledgement in writing of the loan of any kind, nor any correspondence from one party to the other confirming the transaction as being a loan. In the circumstances, the Committee deliberated and determined that the monies that had been paid on Dr. Tse's behalf were indeed as the result of credits that he had built up in the laboratory by reason of having referred patients to it and that these credits were utilized by him to his own advantage. In the opinion of the Committee, this constituted professional misconduct and the Committee found Dr. Tse guilty of professional misconduct.

After hearing representations with respect to penalty from respective counsel, the Committee further deliberated and directed that Dr. Tse be suspended from the Register of the College for a period of six months. Dr. Tse has filed an appeal.

2. Dr. Jaroslav Vanek

Dr. Vanek was charged with professional misconduct in that it was alleged that in the years 1974 and 1975 or a part thereof, he referred a number of patients to ABKO Medical Laboratories Limited in return for which he accepted money, and/or furniture which was paid by ABKO Medical Laboratories Limited, all of which having regard to all the circumstances existing herein constituted professional misconduct.

Dr. Vanek appeared, represented by counsel and pleaded not guilty.

The evidence presented indicated that in the month of December 1975, Dr. Vanek had ordered a dining room table from the Art Shoppe which cost \$1,149.75, of which \$200.00 was paid by way of a cheque of ABKO Medical Laboratories Limited dated December 4, 1975, the balance of \$949.75 being paid by way of a cheque of ABKO Medical Laboratories Limited dated December 15, 1975. The bookkeeper in her evidence stated that in the first 9 months of the year 1975, Dr. Vanek had referred patients to the laboratory which generated a total of \$4,662.00 in revenue to the lab, of which Dr. Vanek was credited with a commission of 15%.

In defence, Dr. Vanek stated that he first met Mr. Abersek, who is one of the principals of the laboratory, in July 1975 and that as a result of this meeting he began referring patients to the lab for tests. Dr. Vanek further stated that around mid-

November or early December 1975 in one of his conversations with Mr. Abersek, he mentioned the high costs of everything and apparently the conversation moved to the point where Dr. Vanek had mentioned that he had seen a dining room table that he liked to purchase and furnish in his new home but that he had been unable to afford it. Thereupon Mr. Abersek indicated that he would help out Dr. Vanek and according to Dr. Vanek, Mr. Abersek indicated that he could go ahead and purchase the table and that the lab would pay for it and that Dr. Vanek could repay the lab in a couple of months. In fact, shortly after the newspaper story about the laboratory, it seems that Dr. Vanek, according to his evidence, scrambled and was able to assemble enough money, mainly from his wife's bank account, to repay to the lab the money which it had paid to the Art Shoppe for the purchase of the dining room table.

In cross-examination, Dr. Vanek however admitted that aside from his statement that this transaction was a loan, there was nothing else to support a loan, namely, no promissory note, no rate of interest charged on the loan, no acknowledgement of the loan, no letter from either party confirming that this transaction was a loan, and in the circumstances, including the fact that Dr. Vanek hurried to repay to the lab the monies which it had earlier paid after the newspaper story had broken out, the Committee decided that the transaction was such that it did not fall within a loan but instead, it was a payment made by the lab on Dr. Vanek's behalf out of a credit that he had built up at the laboratory by reason of having referred to it a number of patients for tests over the past few months. Accordingly, Dr. Vanek was found guilty and directed to be reprimanded.

3. Dr.

Dr. attended before the Discipline Committee of the College of Physicians and Surgeons of Ontario on June 23, 1976 represented by counsel, charged with professional misconduct for having failed to maintain the standard of practice of the profession in connection with his performing circumcision procedures on a young patient. The evidence indicated that Dr. had attempted the circumcision firstly using a circumcision clamp, which procedure failed due to the formation of excessive scar tissue at the circumcision site with resulting phimosis. A second procedure was undertaken using the plastibell method and this procedure failed for apparently the same reasons as the first procedure performed by Dr. The witnesses for the College included the child's mother and the urologist who was finally successful in completing the circumcision procedure properly. In the view of the Discipline Committee, the evidence presented on behalf of the College was not sufficient to establish the charge of professional misconduct and accordingly the charge was dismissed.

4. Dr.

Dr. was charged with professional misconduct in that in or about the month of November 1975, while having a patient under his care he pressured her into revealing to her husband an extra-marital affair and in so doing failed to

maintain the standard of practice of the profession, contrary to the applicable regulation.

Dr. attended by counsel and pleaded not guilty to the charge.

Essentially, there was not any real dispute as to the relevant facts herein. It appeared that Dr. had been treating the husband of the complainant about twice a week for about a one year period for psychotherapy and during the course of that treatment Dr. decided it would be helpful if the patient's wife received psychiatric counselling. An appointment was therefore made for the wife, the complainant, to attend at Dr. office for the purpose of recommending to her an independent psychotherapist and it was during the course of this visit that the wife indicated to Dr. that she had been engaged in an extra-marital relationship but that she did not wish this information to be passed on to her husband.

Subsequently, Dr. invited the wife to attend at his office for further discussion and it was on the second attendance that he expressed his opinion that the problems which the couple were having might be better solved if the wife told her husband of her extra-marital relationship. The wife in her evidence stated that she initially rejected this suggestion strongly but that Dr. had intimidated to her that if she did not tell her husband, he would. As a result, the complainant feeling that her husband might accept the information better from her than from the doctor, confided in her husband on the same evening with disastrous results to her and her relationship with her husband.

In defence, Dr. stated that the wife had placed him in an impossible situation by disclosing to him her extra-marital affair and that he could not proceed with psychotherapy sessions with the husband, because to do otherwise would be party to a deception which, according to Dr. is unthinkable in a therapeutic relationship. Dr. denied that he pressured the wife into revealing the relationship to her husband and stated that in the ongoing therapy sessions with the husband, he, Dr. could not promise to conceal the information that she had imparted to him. He further stated that to continue treating the husband without him knowing of his wife's infidelity would have been unsatisfactory and if pressure was exerted upon the wife, Dr. felt that it was in the patient's best interests.

There was expert evidence called by the College and by Dr. and it is rather interesting to note that the expert, called on behalf of the College, indicated quite clearly that in his opinion it was wrong of Dr. to pressure the wife into revealing her extra-marital relationship. He felt that Dr. had a number of alternatives open to him, namely, he could terminate the doctor-patient relationship with the husband, he could carry on the therapy sessions as before, keeping the information which he had acquired confidential, he could see both the husband and wife together and possibly arrange the discussion in such a manner that the wife would eventually reveal her infidelity to the husband or he could continue to work with the husband and wife

together in the expectation that the joint session would bring the couple back together without the husband being any the wiser.

The expert witness called on behalf of the defence was of the opinion that secrets as between husband and wife in therapy sessions of this nature cannot be maintained, that to withdraw as the physician for the husband would be damaging and that in some tacitful way, it was incumbent upon Dr. [redacted] to have the disclosure of the wife's infidelity made to the husband.

Another expert witness called on behalf of the defence presented some rather startling views with respect to when a person became a patient in psychotherapy sessions and the information that could be disclosed by the therapist, vis-a-vis, husband and wife. It was his view that all information is to be shared with the patient where a husband-wife relationship is involved, no matter what the source of the information.

After hearing all the evidence presented and the submissions of respective counsel, the Committee deliberated and because of the evidence of expert psychiatric witnesses, concluded that the charge of professional misconduct had not been proven to its satisfaction and the charge was therefore dismissed.

5. Dr. Andrew Russell McGee

Dr. Andrew Russell McGee attended before the Discipline Committee of the College of Physicians and Surgeons of Ontario on June 22, 1976 and pleaded guilty of professional misconduct in that he falsified a document in order to make it appear that an inadequate diagnosis had not been made, and to the same end engaged in fraudulent deception. The Discipline Committee accepted the plea of guilty made by the doctor and directed that he be reprimanded.

6. Dr. Patrick Joseph McDermott

Dr. McDermott from Windsor was charged with professional misconduct in that in the period from January 1972 to January 1975 or a part thereof, he permitted, counselled or assisted two physicians who were licensed under Part III of The Health Disciplines Act to practise medicine in contravention of the terms and conditions of their licences.

Dr. McDermott did not appear and initially a plea of not guilty was entered on his behalf.

Evidence however was heard from the two physicians holding Temporary Licences which indicated that each of them held these licences issued on the basis of certificates of employment signed by Dr. McDermott. It was clear on the evidence that Dr. McDermott did not even occupy the same building from which the physicians conducted their practice of medicine which for all intents and purposes was completely separate and apart and independent of the medical practice conducted by Dr. McDermott.

In the circumstances, the Committee found Dr. McDermott guilty of professional misconduct and since the indication was that he was no longer in the Province of Ontario, the Committee directed that Dr. McDermott be suspended from the Register of the College of Physicians and Surgeons of Ontario until

the expiry of his current licence, nor shall his current licence be renewed until he appears before the Discipline Committee to be reprimanded.

7. Dr. Anne Gergely

It was alleged that Dr. Anne Gergely had received a small refrigerator and a portable dishwasher which had been paid by ABKO Medical Laboratory. The evidence presented indicated that a cheque for \$551.48 had been drawn by the laboratory in favour of Bad Boy Appliances as payment of a refrigerator and dishwasher. Dr. Gergely in defence took the position that the two articles had not been used personally and had not been delivered to her house but instead were delivered to the office and only one of the articles, namely, the refrigerator was in fact used, the dishwasher apparently not being suitable for the water fittings in her office. She conceded however that once the publicity broke out in the newspaper as to the problems with the laboratory, she then took steps to see that the articles were returned to the laboratory. The Committee was not prepared to accept this defence and after deliberation found Dr. Gergely guilty of professional misconduct and directed that she be reprimanded. Dr. Gergely waived the right of appeal and the reprimand was accordingly delivered by the Chairman.

8. Dr. [redacted]

It was alleged that Dr. [redacted] had received a valuable decorative vase in return for patients that he had referred to ABKO Medical Laboratory. In this case, it transpired that the College was not able to positively prove that Dr. [redacted]

[redacted] had accepted a vase from the laboratory and in fact Dr. [redacted] testified in his own defence stating that he was unaware of the existence of the vase until it had been delivered to his apartment, save and except for an earlier conversation that he had with his wife in which she indicated that she had a conversation with one of the directors of the laboratory, and had indicated to him that she would like to have a decorative vase which was then on display at Green's Antique Store on Yonge Street, Toronto. Dr. [redacted] stated that when he heard of this proposal, he suggested to his wife that she have nothing to do with it, but subsequently it transpired that indeed a vase was delivered to the apartment and accepted by Mrs. [redacted], apparently as a kindly gesture on the part of the laboratory that Dr. [redacted] might locate a second office in the building in which the laboratory was located and in which the director of the laboratory seemed to be acting as somewhat of a rental agent. Mrs. [redacted] testified on behalf of her husband and stated unequivocally that all of the arrangements were made directly with her, that her husband, save and except for the aforesaid conversation, had no knowledge of the proposal and that at the time she saw nothing wrong in accepting the decorative vase from the laboratory. The purchase price of the vase was \$185.00 plus tax and this expenditure was proven with the production of copies of cheques from the laboratory made payable to the antique store. However, in view of Mrs. [redacted] evidence which was not shaken on cross-examination, the Committee accordingly dismissed the charge.

9. Dr. Peter Mostrokol

Dr. Peter Mostrokol was charged with professional misconduct, in that he received money from ABKO Medical Laboratory. Dr. Mostrokol appeared, not represented by counsel. The evidence indicated that Dr. Mostrokol in September 1976 had received a cheque from the laboratory for \$60.00 and had cashed it. There was evidence that he had been referring some patients to the laboratory for tests and this cheque, according to the bookkeeper of the laboratory testified that it was in payment of commissions for work referred to the lab.

In defence, Dr. Mostrokol took the position that back in early 1969 he was instrumental in initiating the idea of the laboratory but had a falling out with Mr. Abersek who wished to assume control and Dr. Mostrokol stated that he thought that this payment of \$60.00 was a payment by Mr. Abersek to him of a debt which he calculated to be owing to him by Mr. Abersek in return for services that he, Dr. Mostrokol, had rendered in initially setting up the laboratory. However, there was no documentation to support the doctor's position and there was nothing on this cheque indicating that it was in part payment of work performed back in 1969. Accordingly, the Committee felt constrained to accept the evidence of the bookkeeper that this payment was indeed in the form of commission and found Dr. Mostrokol guilty of professional misconduct and directed that he be reprimanded.

10. Dr. Brian Alexander Nixon

Dr. Nixon was charged with professional misconduct in that as the anaesthetist supervising a patient, during a surgical procedure at Peel Memorial Hospital on June 25, 1975, he failed to take proper precautions to ensure that the equipment to be used for administering the anaesthetic to the patient was in proper working order before he began to administer the anaesthetic.

Dr. Nixon attended, represented by counsel and pleaded not guilty to the charge.

There was no real dispute here between counsel for the College and counsel for Dr. Nixon as to the facts. It appeared that the patient was scheduled for surgery of a bunion on her great right toe, the operation to start on the morning of June 24, 1975. The uniqueness of the occurrence was the anaesthetic equipment in use, namely, the usual hoses were attached to the anaesthetic equipment and the other end of the hoses were hooked up to what is known as an Ohio swivel mount. It had been the custom of the hospital to have the valves in this swivel mount removed therefrom, with valves in the anaesthetic machine only. It transpired however that the Ohio swivel mount which was provided for this patient's procedure had been sent out for repair, returned by the manufacturer with the hospital personnel being of the opinion that as in past instances, the swivel mount was returned without valves therein but apparently without anyone checking to see whether or not valves were in the swivel mount. It occurred that indeed this is what happened and the valves were located in the wrong order, so that when the anaesthetic gases were turned on at the machine, none flowed through to the face mask. Dr. Nixon stated that it had been his pattern of practice

to test all equipment before applying it to the patient and in this instance he was certain that he conducted the usual order of tests, which was to inflate the bag on the anaesthetic machine and if the gases flowed through then the bag would gradually deflate. However, for some reason unexplained, Dr. Nixon did not watch to see whether or not the bag deflated and proceeded to apply the mask to the patient's face and shortly thereafter encountered trouble in the administration of anaesthesia. The administration of thiopentone was commenced with an endotracheal intubation being carried out five minutes later. The endotracheal tube was changed in that Dr. Nixon thought that possible there was some blockage in the tube. It was not until another physician bronchoscoped the patient and satisfied himself that there was no blockage in the tube, that attention was drawn to the anaesthetic equipment, when the point of obstruction was identified as being a wrong valve being placed in the Ohio swivel mount. The patient had a cardiac arrest but was revived and transferred to the intensive care unit where however, due to the cerebral effects of anoxia, she died the following day.

Dr. Nixon admitted that as the anaesthetist he was the person in charge of the anaesthesia equipment and the one responsible for ensuring that it was in proper working order.

Two experts called on behalf of the College, stated their understanding of the standard of practice of the medical profession in preparing for the administration of anaesthesia. In view of their evidence and the admissions of Dr. Nixon, the Committee concluded that Dr. Nixon was indeed guilty of professional misconduct and so found. He was directed to be reprimanded. Dr. Nixon waived his right of appeal and the reprimand was delivered.

11. Dr.

Dr. _____ was charged with professional misconduct in that he was alleged to have submitted an account for medical services rendered to a patient which services involved personal attendance upon the patient, when in fact he had not attended this patient personally at all. The evidence submitted on behalf of the College indicated that a young man had arrived at the emergency department of a hospital after a motor vehicle collision in which he had sustained minor eye injuries. The evidence of this patient and the emergency room nurse was that the condition had been described to the doctor in a telephone conversation, he had prescribed medication in response to the condition reported to him and had advised the patient to see his own family physician as soon as possible. The evidence was that the doctor had not personally attended the patient at the hospital. A bill was however sent to the patient's home with a charge for personal attendance on this patient.

The evidence for the doctor was that he had received a phone call, and being cognizant of the opinion of his peers at the patient's hometown, he had purposely attended at the hospital to satisfy himself on the patient's condition. His evidence was that he was casually dressed and that his appearance and brief attendance on the patient might well have confused the patient as to whether or not a physician had

actually examined him. The Discipline Committee was unable to conclude that the facts presented in evidence were sufficient to support the charge and accordingly the charge was

12. Dr. Alan Stuart Davidson

Dr. Davidson was charged with professional misconduct in that

- (a) "you released a confidential report on your patient to another person, without his consent and without being required by law to do so, all of which, having regard to all the circumstances existing herein constitutes professional misconduct as defined in Section 26(21) of Ontario Regulation 577/75 made under The Health Disciplines Act, 1974"
- (b) "being in possession of confidential memoranda written by your patient concerning his relationship with his wife, you divulged the contents of such memoranda to the wife in the presence of the patient contrary to his objections and express instructions that you not do so, whereby you contravened the provisions of subsection 21 of Section 26 of Ontario Regulation 577/75 made under The Health Disciplines Act, 1974"

Dr. Davidson appeared, represented by counsel and pleaded not guilty. Dr. Davidson requested a public hearing and this was granted.

Briefly, the evidence indicated that in December 1973, the couple was involved in a custody dispute concerning their 4 children. The husband, it seems, retained the services of a lawyer, who in turn sought the assistance of Dr. Davidson who presumably was to make an assessment of the husband and render a psychiatric opinion. In any event, around the month of May 1974, the couple resolved their differences and the lawyer was paid his bill by the husband which it appears included whatever bill Dr. Davidson rendered to the lawyer.

Then in September 1974 it seems both husband and wife, on their own initiative, approached Dr. Davidson for joint counselling sessions which started on September 5, 1974 and continued through to January 10, 1975. In the initial sessions it seems that Dr. Davidson made progress reports and gave a copy to both at the following session. Both the husband and Dr. Davidson stated that this manner of giving out progress reports caused some antagonism between the spouses and was accordingly stopped. The husband also stated that from time to time Dr. Davidson would extract as a topic for discussion, subject matter from memoranda that the husband had prepared in the earlier period for his lawyer who had later given copies to Dr. Davidson. The doctor however strongly denied this and stated that in fact he received only two of the four memoranda that the husband had prepared and that he (Dr. Davidson) scanned the two which he had received, thought that they were of little merit and put them in the back of his file. This part of the evidence is related only to lead up to the final joint counselling session held on January 10, 1975 in which the husband stated that Dr. Davidson again referred to the earlier memoranda, notwithstanding the clear instructions of the husband to the contrary, and since it appeared to the

husband that Dr. Davidson was not going to refrain from making references to the memoranda, he walked out of the meeting. Dr. Davidson, on the other hand, denies that this was the reason the husband walked out and Dr. Davidson's defence on this area of the evidence was corroborated by that of the wife. In fact, Dr. Davidson stated that he would not agree to conduct joint counselling sessions with restrictions such as the husband says he sought to impose. In any event, Dr. Davidson prepared a Confidential Progress Report on that meeting of January 10, 1975, which Report bears the same date. This report had a note at the bottom "Copy for Court Feb. 28, 1975" and according to Dr. Davidson it was given to the wife around that date in order to assist her in Court on an assault charge that she had laid about that time against her husband, which charge was to be heard around the end of February or shortly thereafter. According to Dr. Davidson, he stated that he considered the husband to be dangerous and this report was intended to help the wife in the prosecution of the charge of assault.

The husband testified that he did not authorize Dr. Davidson to release such a report to his wife and there was no evidence presented that Dr. Davidson was required by law to release such a report, as we interpret the phrase "required by law" set out in Regulation 26(21) of The Health Disciplines Act.

It was argued that since both spouses were attending joint counselling session that the doctor was equally entitled to send a copy of his report to the husband and the wife. It appears on the evidence however that the husband did not receive a copy of this Report until some considerable time after February 28, 1975 and then only when he requested it directly of Dr. Davidson.

After hearing submissions, the Committee deliberated, found him guilty of professional misconduct and directed that he be reprimanded. Dr. Davidson has appealed this case to the Divisional Court.

13. Dr. Robert Louis Reid

Dr. Reid was charged with professional misconduct in that in the year 1974 he performed a bunionectomy and metatarsal osteotomy on a patient, when the said procedure was not medically necessary and in so doing he failed to maintain the standard of practice of the profession.

Dr. Reid appeared, represented by counsel and pleaded not guilty to the charge.

On the basis of the evidence presented, the Discipline Committee was met with an application by defence counsel to dismiss the charge on the grounds that no case had been made out against the doctor and after hearing from Dr. Reid and his expert witness, the Committee deliberated and decided to grant defence counsel's application, and the charge was therefore dismissed.

RESTORATION

1. Dr. Robert Louis Reid who had been found guilty of professional misconduct, and in whose case the penalty had been postponed subject to certain terms and conditions, was res-

tored to full practice privileges, having satisfied the Committee that the terms and conditions had been met

2. Dr. Engelberth Konseck was granted a full licence to practise. Dr. Konseck had been erased for cause in 1961.

3. Dr. Gary Howard Rosen, having been erased from the Register for professional misconduct in 1975 applied for and received a General Licence

4. Dr. Ernest Ward Pedley, having been erased in 1972 for cause, and subsequently in 1973 having been placed on the Special Register subject to conditions, applied for restoration to the Register and a General Licence, and received a General Licence with no restrictions.

Report of the Medical Review Committee to the Profession, p. 15

The Medical Review Committee is pleased to have this opportunity to inform the profession of its activities since the last semi-annual meeting and to review its work over the past few years.

Since the last Report to Council, the Committee has held 8 two-day meetings and has received 59 new referrals from the General Manager of the Ontario Health Insurance Plan during that time. Of these, 57 were ordered inspected by the staff of part-time medical inspectors, now numbering almost 100. One physician was requested to provide the Committee with a written answer to the General Manager's concerns without the need for inspection following which his accounts were recommended to be paid in full, and one physician was requested to attend for an interview without prior inspection.

Forty one completed inspection reports were considered by the Committee during the period and in 27 cases, the Committee concluded that serious enough concerns were raised to warrant a request that the physician attend for an interview. In 11 cases, the Committee was satisfied that the report of the medical inspector adequately answered the concerns of the General Manager and recommended payment in full without further question. In 2 cases, payments were adjusted by the consent of the physician based on the report of the inspector and 1 case is yet to be finalized.

The Committee met for one to two hour interviews with 27 physicians. In 5 cases, the Committee was satisfied that the physicians' responses answered the concerns of the General Manager and recommended payment of the accounts in full. In 17 cases, it was concluded that charges had been submitted to the Plan which ought not to have been paid according to the O M A Schedule of Fees and the Regulations and accordingly, the Committee recommended reduction of payments of these accounts to the General Manager. In 1 case, a reinspection of the doctor's practice by a multi-specialty inspection team was ordered and one review of OHIP profile data was ordered. Three cases are yet to be finalized.

The Committee has continued to find that the major cause of improper billing for physician services to OHIP is ignorance on the part of the physicians and their billing staff of the

O M A Schedule and its Preamble. A typical example of such misunderstanding occurred where a physician was asked to see patients as a consultant to the dentistry department of a major hospital prior to the performance of difficult dental services within the hospital. The physician, an internist, realizing that the complete examination which he was performing could not be charged as a consultation having been referred by a dentist, charged a general assessment fee. Had he been aware of the provisions of section 29(o) of the Preamble to the Ontario Medical Association Schedule of Fees which provided that "A doctor, regardless of specialty, who is required to examine a patient in preparation for dental surgery under general anaesthesia, may charge \$ 12.00 (C904) when he has seen the patient in the previous twelve months for a general assessment or \$ 17.00 (C903) if he has not seen the patient within the previous twelve months" he would have submitted the correct fee. He was, however, unaware of the correct procedure because he had not read the Preamble to the tariff and accordingly, submitted incorrectly. His fees required adjustment by the Medical Review Committee. If every physician would only read the Preamble to the O M A Schedule carefully and in detail and discuss any points which are not clearly understood with the O M A secretariat, many referrals would be avoided. In addition, if all physicians would ensure themselves that every person or agency who bills on their billing cards does so in a fashion of which they would personally approve, much embarrassment and discomfort would never occur.

A small number of referrals have, unfortunately, initiated inspections which revealed significant evidence of fraud and these investigations are now being carried forward by the Ontario Provincial Police, Anti-Rackets Branch. In addition, a number of cases have come to light in which it was necessary to inform the Registrar of conduct of the physician which, it was believed, ought to bring other provisions of *The Health Disciplines Act* into play.

Because of its concern that many doctors were becoming victims of their own ignorance of the tariff and the regulations governing billing procedures as set out in the Act, the Medical

Review Committee will continue its program of issuing Bulletins to the profession which attempt to inform the members of the regulations and laws surrounding billing practices and record keeping. In February 1976, the most comprehensive of these Bulletins to date was issued and considerable concern was expressed by some members because of the feeling that the "policies" set out were too harsh.

Considerable personal dialogue with a number of individual physicians and representatives of local medical societies and academies ensued. In the fall of this year, a meeting between the O.M.A. Executive Committee and the Medical Review Committee was held. Mutual concerns were discussed and an agreement to co-operate closely in an attempt to help physicians understand the regulations, tariff and function of peer review was reached. The O.M.A. has subsequently sent an observer, Dr. Mahon, to a number of M.R.C. meetings and has published a report setting out in detail the workings of our Committee.

In addition, the O.M.A. has agreed to help physicians whose practice patterns are referred to the M.R.C. by helping to find physician peers who would assist the referred doctor by providing counsel, opinion and moral support as may be needed. It is felt that the attendance of such peers before the M.R.C. will help the Committee to obtain a better perspective of the referred physician's practice in the context of his specialty or geographical area. It is also felt that this will alleviate the need felt by some doctors to engage solicitors, who, while having the best of intentions, are not able to be of much assistance in discussing questions of medical necessity and professional standards of practice.

The Committee expresses its thanks to the O.M.A. Executive Committee for its gracious and timely assistance in these matters.

The Medical Review Committee has had occasion in the last few months to review at some length the extent and character of its efforts since the inception of the Committee. This was done in a report, our internal review mechanism to assess effectiveness and to assist in directing priorities and future directions. It is felt that the information which has been derived from this review will be enlightening to members of the profession at large and particularly, when read in conjunction with the Committee's report published in the Ontario Medical Review will give College members a much clearer perspective on the activities of the Committee.

In reviewing the following charts, members should be aware that the figures relate to fiscal years running from April 1st to March 31st respectively and that footnotes must be read carefully in order to correctly interpret the charted figures.

The charts show that since 1971-1972, the Committee has considered 632 matters all referred directly by the General Manager of OHIP save those referred under Q.S.P.F. which were generated to the Committee according to a formula.

A perusal of the activities during the years reviewed will show that initially, only small numbers of practitioners were referred, almost all with only one concern expressed and that a great deal of time was spent considering a small number of matters.

In ensuing years in the early stage of the Committee's development, the majority of referrals involved possible misrepresentation of claims and a review of a significant number of physicians on the basis that they had very high incomes. Review of the latter category was extremely unsophisticated and unproductive in nature and was soon discontinued. Review of the former yielded substantial numbers of problems requiring police or other investigative activities. In some cases, extremely large amounts of money were involved. In 1973, the Medical Review Committee and Medical Branch moved to a slightly more sophisticated method of referral based upon ratio of general assessments to minor assessments in family practice. This was more productive and many physicians were found not to be keeping adequate records of general assessments and monies had to be recovered. Much more important, recent inspections have indicated that the profession as a whole has, possibly because of this activity, become aware of the necessity of keeping adequate records in the case of such assessments and the standard of practice in the province has significantly improved with respect to this service.

Through 1974 and into 1975, the Quality Service Payment Formula described in the various Bulletins distributed at that time which was a formula developed between the Medical Review Committee and peer groups in each specialty to identify those practices where volume of practice raised questions as to the quality of service was in place and while effective for purposes consistent with its design, it proved to be from the point of view of monitoring consultants, an unsophisticated device which fell into disuse in early 1975.

Subsequently, new profile analysis, detailed claims analysis, Fee Schedule Code utilization profile and patient claims history have been used together as a monitoring system and this rather more sophisticated method of analysis has reduced the number of marginally founded referrals to the Medical Review Committee and improved the efficiency of professional peer review substantially.

Very rough figures indicating in general proportions the number of physicians by specialty reviewed during the existence of the Committee are indicated in the following chart. These figures are estimates based on periodic sampling and are useful to get an idea of relative proportions of Reviews by Specialty.

General Practice	55
General Surgery	50
Internal Medicine	45
Gynaecology & Obstetrics	55
Paediatrics	30
Orthopaedic Surgery	45
Otolaryngology	45
Urology	15
Ophthalmology	55
Dermatology	15
Neurosurgery	05
Plastic Surgery	02
Diagnostic Radiology	20
Anaesthesia	10
Neurology	05
Psychiatry	05
Thoracic Surgery	08
Physical Medicine & Rehabilitation	01
Therapeutic Radiology	00
Physicians Operating Laboratories & Diagnostic Facilities	50

As always, the workload of the Committee and the technology and manpower needs which accompany it increase steadily. The Committee, in addition to service data microfiche, is now equipped with registration data microfiche on a district and province basis. This allows for more rapid interpretation of service data in the investigation phase by providing the investigative staff of the Committee with a ready means to identify practice association, hospital affiliations, clinic billings and multiple physician billings and so eliminate these from the stream of investigation at an early stage. It is also of considerable value to the registration department of the College in locating current addresses for physicians in the case of returned correspondence regarding licensure. The Committee will shortly acquire patient history microfiche which will involve a bimonthly update of all services rendered to all patients by all physicians and practitioners in the province to allow rapid interpretation of referrals and inquiries re professional services billed through OHIP.

Several new computer programs are in the developmental stage and in cooperation with OHIP's Professional Services Monitoring Branch and Ministry of Health Systems staff, the Medical Review Committee continues to labour at improving our quality of care monitoring process which is now counted among the most advanced in the world.

Physicians are now able to obtain their new profile analyses on a yearly basis from the Ministry of Health at cost as has been the case with monthly service distributions. It is felt that this

development will be very helpful both in allowing physicians to better manage their practices and also, in revealing to them the nature of their practices in comparison with those of their peers both in terms of their own services and services which they generate. In addition, the new year has seen the introduction of the new Ontario Diagnostic Coding System for ambulatory care which, combining the best features of the International Classification of Diseases and subclassifications designed specifically for ambulatory care, will allow a better understanding of the distribution of disease processes and the patterns of health care delivery distributed throughout the province geographically. It is hoped and expected that this additional information, which will be voluntarily provided by the profession in the best interest of their patients, will allow for a more reasoned and equitable distribution of needed health care services based on demonstrated patient need in a time of fiscal constraint. Profiles may be developed utilizing diagnostic data provided by the physician which will show that on a regional basis, the incidence of, as an example respiratory disease in a particular area, is considerably in excess of the provincial norm. This may well identify the need for respiratory diagnostic and therapeutic equipment and personnel associated with the local health care facilities which would otherwise go unrecognized or unfilled. It is hoped, with the co-operation of the profession, that such information will allow an improved standard of health care delivery and monitoring of the effectiveness of the health care system.

INTERIM REPORT, February, 1978 (excerpts)

<i>The College of Physicians and Surgeons of Ontario</i>	
REGISTRATION STATISTICS	
at December 31, 1977	
NUMBER OF MEMBERS ON THE GENERAL REGISTER	
December 31, 1971.....	12,558
December 31, 1972.....	13,340
December 31, 1973.....	13,932
December 31, 1974.....	14,472
December 31, 1975.....	14,951
December 31, 1976.....	15,461
December 31, 1977.....	15,961

NEW REGISTRATION BY COUNTRY OF GRADUATION		
	1976	1977
Other Countries:—		
Argentina	1	1
Australia	7	10
Belgium	1	1
Brazil		1
Bulgaria	1	1
Burma		1
Ceylon	2	2
China	1	1
Czechoslovakia	9	5
Denmark	1	
East Africa	1	
Egypt	6	11
France	2	1
Germany	1	3
Greece	3	2
Haiti	2	
Hong Kong	9	6
Hungary	2	4
India	32	23
Iraq	1	1
Italy	1	
Kenya	1	
Malaysia	1	
Mexico	4	2
Netherlands	1	
New Zealand	6	2
Nigeria	1	2
Pakistan	7	4
Peru		1
Philippines	3	5
Poland	5	4
Portugal	2	
Romania	2	7
Russia	1	1
Singapore		1
South Africa	18	14
Spain	3	1
Switzerland		2
Taiwan	6	6
Turkey	2	
Uganda	8	4
Ukraine		1
United Kingdom	126	117
United States	25	12
Venezuela	1	
Vietnam		2
West Indies	4	9
Yugoslavia	8	1
Sub-total	321	272
Canada —		
Ontario	438	405
Other Provinces	114	167
Sub-total	552	572
TOTAL	873	844

Table I REGISTRATION IN ONTARIO 1971-1977

Year	Graduates from Canadian Universities	Graduates from U.K., Australia, N.Z., S.A.	Graduates from Universities in U.S.A.	Graduates from Other Universities	Total
1971	500	203	20	229	952
1972	523	227	20	254	1024
1973	529	177	22	167	895
1974	513	192	15	154	874
1975	513	193	14	116	836
1976	552	157	25	139	873
1977	572	143	12	117	844

REGISTRATIONS BY SOURCE OF MEDICAL EDUCATION

Table II

Year	Ontario		Other Provinces		U.K. and Ireland		Aust., N.Z., S.A. and U.S.A.		Other Countries		Total
	G.P.	Spec.	G.P.	Spec.	G.P.	Spec.	G.P.	Spec.	G.P.	Spec.	
1971	332	10	136	22	161	16	45	1	172	57	952
1972	349	10	143	21	174	27	40	6	166	88	1024
1973	385	17	111	16	129	20	43	7	121	46	895
1974	299	3	96	15	151	12	41	1	130	24	874
1975	378	10	112	13	164	10	32	1	91	25	836
1976	432	6	106	8	117	9	50	6	109	30	873
1977	386	19	130	37	88	29	28	10	73	44	844

Table III

ERASURES

Year	DEATH		RETIREMENT				FOR DUES		FOR CAUSE		Total
	G.P.	Spec.	In Ontario G.P.	In Ontario Spec.	Out of Ontario G.P.	Out of Ontario Spec.	G.P.	Spec.	G.P.	Spec.	
1971	48	30	24	13	73	44	46	22	1	0	301
1972	49	39	31	10	94	54	20	9	3	3	312
1973	59	55	45	15	77	80	24	10	1	2	368
1974	39	38	37	20	141	78	35	21	0	1	410
1975	53	42	41	19	122	79	43	12	2	2	415
1976	64	44	49	23	111	74	42	27	2	0	436
1977	60	40	72	30	87	68	36	10	2	0	405

Table IV

GAIN OR LOSS

Year	New Registrations	Re Registrations	Erasures	Net gain (loss)
1971	952	79	301	730
1972	1024	70	312	782
1973	895	65	368	592
1974	874	76	410	540
1975	836	58	415	479
1976	873	73	436	510
1977	844	61	405	500

Table V REGISTRATIONS ON THE SPECIAL REGISTER

Year	Classification					Total
	Academic Licence	Public Service Licence	Under serviced Area Licence	Hospital Practice Licence	Specified Licence	
1977 New						
Registrations	11	8	6	11	0	36
Renewals	141	143	36	48	55	423
TOTAL	152	151	42	59	55	459

Report of the Complaints Committee, p. 5

In a ten-month period, from January 1, 1977 to October 31, 1977, there has been a slight decrease in the number of complaints received at the College compared to the same period in 1976. There has, however, been an increase in the number of cases considered by the Complaints Committee.

Certain complaints are being received so frequently that they have become a cause for concern. These have been grouped under the appropriate subsection of Ontario Regulation 577/75 of the Health Disciplines Act, 1974.

Section 26(8): *"charging a fee that is excessive in relation to the services performed"*

Complaints related to alleged breaches of this subsection are frequently concerned with fees charged by physicians for medico-legal reports and reports to insurance companies. In the 1977 Schedule of Fees of the Ontario Medical Association, fees for all reports, with the sole exception of a certificate of mental illness, are listed as I.C. (Independent Consideration). It is therefore at the discretion of the individual physician to arrive at what he considers to be a fair fee for performing this particular service, taking into consideration the time and effort expended in preparing the required report. It should be pointed out that not infrequently the account for this service is passed directly to the patient, who may be in no position (in cases involving claims for damages for personal injuries) to pay the account until civil litigation has been completed which may take several years.

It is the usual practice of the College, in such cases, to refer the complainant to the Mediation Committee of the Ontario Medical Association where the appropriateness of the doctor's fee can be adjudicated by his peers.

Section 26(21): *"giving information concerning a patient's condition or any professional services performed for a patient to any person other than the patient without the consent of the patient unless required to do so by law"*

During the past year the College has investigated several cases in which it has been alleged that this regulation has been breached, one of which was referred to the Discipline Committee. However, many of these complaints, dismissed by the Complaints Committee, have been referred to the Health Disciplines Board. Initially the Board considered that this regulation should be interpreted literally, and in fact, this opinion was supported by the Board's legal counsel who attended several reviews when these cases were discussed. However, in recent cases the Board has agreed that in certain instances, a strict interpretation of this subsection would be inappropriate as it would prevent a physician from fulfilling an overriding responsibility: such as communicating with a patient's family, or providing necessary information for the welfare of children — and indeed of adults —

where the patient has expressed the intention of inflicting bodily harm.

The College's interpretation of the intent of this subsection may be found elsewhere in this report.

Section 26(26): *"failing to provide within a reasonable time and without cause any report or certificate requested by a patient or his authorized agent in respect of an examination or treatment performed by the member"*

The College has received a large number of complaints alleging a violation of this subsection. These relate to the failure of physicians to provide necessary medical information to another physician at the request of a patient; failure to respond to a request for a medico-legal report; and the failure to provide the Workmen's Compensation Board with a report.

The alleged failure of communication on the part of physicians continues to be the basic reason for many complaints. This issue is frequently a cause of concern at Health Disciplines Board's reviews with special reference to the alleged failure of physicians to explain adequately alternate methods of treatment; the results to be anticipated; the expected period of disability; and the alleged failure of physicians to communicate with patients and/or the family during treatment especially in cases not progressing favorably.

Doctor's records, both in his office and in the hospital, are frequently his sole means of establishing the fact that proper medical care was rendered. When such records are deficient, it may be very difficult for a doctor to recall exactly what transpired during the course of his attendance on a patient at a later date. It should also be pointed out that there is a description in the regulations of the Health Disciplines Act detailing exactly the information that must be provided in a patient's medical record. This includes the name and address of the patient; each date that the member sees the patient; a history of the patient; particulars of each physical examination of the patient by the member; investigations ordered by the member and the results of the investigations; each diagnosis made by the member respecting the patient; and each treatment prescribed by the member for the patient. Such records are required to be retained by the member for a period of six years after the date of the last entry in the record or until the member ceases to engage in the practice of medicine, whichever first occurs.

Activities of the Complaints Department

For the period January 1, 1976 to October 31, 1976, the Complaints Department received 524 new pieces of correspondence; 219 items (42%) were processed as inquiries while 305 items (58%) were handled as complaints. For the

same period in 1977, the Department received 498 new pieces of correspondence with 250 items (50%) being processed as inquiries and 248 items (50%) being handled as complaints.

A comparison of these figures indicates that while the total of new mail is down by 26 items (5%) in 1977, the Department is processing more (8%) of it as inquiries.

The comparison of the departmental and Committee resolutions of the total amount of new mail (inquiries and complaints) for 1976 and 1977 remains about the same. The Department resolved 64% and the Committee 36% in 1976, while in 1977 the Department resolved 63% and the Committee resolved 37%.

It is of interest to note that in 1976, 63% of the new mail was written by the patient while in 37% it was originated by a third party. In 1977, 53% of the new mail was written by the patient and 47% was written by someone acting on behalf of the patient.

Activities of the Complaints Committee

In the first ten months of 1977, the Committee met on nine occasions and reviewed 168 cases. Of these, five cases (3%) were referred to Discipline, 117 cases (70%) were dismissed, while 42 cases (24%) were dismissed with an admonishment, caution, warning or suggestion. One case (1%) was referred to another committee of the College, and in three cases (2%) the decision was deferred pending receipt of additional information. It is interesting to note that in 1976, 20 cases (9%) of the 226 cases considered by the Complaints Committee were referred to Discipline, while in

1977 only five cases (3%) were so referred.

In 1976, 76 cases (38%) dismissed by the Complaints Committee were referred to the Health Discipline Board, while in 1977, 57 cases (36%) that had been dismissed by the Complaints Committee were referred to this Board.

Activities of the Health Disciplines Board

In 1976, of the 76 cases considered by the Health Disciplines Board, the decision of the Complaints Committee was confirmed in 61 cases (80%), 12 cases (16%) were referred back to the Complaints Committee for reconsideration, and at year end in three cases (4%) a decision had not been received by the College.

In the first ten months of 1977, of the 57 cases reviewed by the Health Disciplines Board, in 26 cases (46%) the decision of the Complaints Committee was confirmed, in two cases (3%) the case was referred back to the Complaints Committee, and in 29 cases (51%) the Board's decision had not been received at the College.

The foregoing statistics indicate that while the number of complaints and inquiries directed to the College has not altered appreciably in the past year, the number of cases referred to Discipline by the Complaints Committee and the number of cases referred back to the College by the Health Disciplines Board have both decreased significantly. This may be attributed to the more thorough investigation being carried out by the College in dealing with complaints and inquiries, together with more detailed reasons being written by members of the Complaints Committee to substantiate their decision.

Report of the Discipline Committee, p. 7

1. Dr. was charged with professional misconduct in that it was alleged he had carried on an improper association and engaged in sexual intercourse with a patient, improperly prescribed various drugs for her and failed to assure that she sought and received competent psychiatric assistance.

Dr. attended the Discipline Committee hearing with his Counsel.

After evidence and argument the Discipline Committee found that Dr. had developed a social relationship with a Mrs. and had hired her as an employee at his clinic. Their relationship eventually led to an affair, and sexual intercourse occurred. Thereafter, Dr. arranged for some pregnancy tests to be done for Mrs. and prescribed certain drugs for her.

The Discipline Committee found that Dr. was not guilty of professional misconduct. It was the opinion of the majority of the Committee that the phrase "sexual impropriety with a patient" found in Section 26(28) of Regulation 577 was intended to prevent medical doctors from using their privileged position to take sexual advantage

of their patients. This section was not designed primarily to prevent a medical doctor from treating a person with whom he has an existing sexual relationship. In this case it was clear that the sexual relationship was initiated as a result of an employment and social relationship and not as a result of any doctor/patient relationship which, at the initial stage, did not exist.

The charge of professional misconduct against Dr. was therefore dismissed.

2. Dr. was charged with eight counts of professional misconduct, seven of which involved a dilation and evacuation procedure on a single patient, and the eighth charge concerned inadequate surgical assistance in the performance of a mastectomy.

After evidence and argument the Discipline Committee found that the facts with respect to six of the eight charges against Dr. had been made out. The Committee went on to find that only two of the charges made out constituted professional misconduct. Therefore, Dr. was convicted of professional misconduct in failing to maintain the standard of practice of the profession

by failing to immediately seek consultation when it appeared that his attempt to perform a dilation and evacuation procedure was not progressing as planned. In addition, the Committee found that, by failing to remain with the patient in the operating room when it became apparent that the initial attempts at suction were futile, Dr. conducted himself in a manner that would reasonably be regarded by members of the Profession as disgraceful and unprofessional. The other charges against Dr. were dismissed.

This matter came on for hearing and decision with respect to a penalty on August 9, 1977 at which time the Committee, after deliberation, assessed the following penalty:

- (1) Dr. be reprimanded and the reprimand be recorded on the Register;
- (2) the name of Dr. not be published;
- (3) Dr.'s surgical privileges in the operating room will be withdrawn and a condition attached to his licence to that effect. He will be entitled to re-apply in two years if there is ample evidence to satisfy the College that he has had sufficient retraining in surgery.

3. Dr. Omelian Boris Yarey was charged with professional misconduct arising out of the use of and the reliance placed upon x-ray films that were of little or no value for diagnostic purposes, making interpretations of x-ray films that could not properly be supported by the films, failing to properly examine or treat five patients, and improper use of two separate drugs.

The Discipline Committee found that the charge of relying on x-ray films of little or no value for diagnostic purposes was made out, as were the charges of failing to properly examine or treat four of the five patients. The charge with respect to the fifth patient was withdrawn, and the Committee concluded that the facts in support of the other charges were not established.

After careful consideration the Discipline Committee concluded that Dr. Yarey failed to maintain the standard of practice of the Profession and in addition exhibited conduct that, having regard to all the circumstances, would reasonably be regarded by members of the Profession as unprofessional. It follows that Dr. O. B. Yarey was found guilty of professional misconduct as alleged in the five charges brought against him.

After careful consideration the Discipline Committee imposed the following penalty:

The decision as to penalty will be postponed for a period of six months, or for such further period as the Committee may deem fit, under the following conditions:

- (1) Dr. Yarey is prohibited from treating patients with diapulse, ultra violet light, and from the taking or interpreting of x-rays, but shall refer patients requiring such measures to an approved facility;
- (2) Dr. Yarey shows satisfactory proof that he has upgraded his skills and knowledge as a family practitioner;

(3) that Dr. Yarey report in writing to the Registrar those steps he is taking to carry out the above measures within six months.

4. Dr. was initially charged with twenty counts of professional misconduct. Counsel for the College formally withdrew four of the counts during the course of four days of hearings, and in argument Counsel for the College conceded that the facts were not made out to support two other counts.

Of the fourteen remaining counts one dealt with the legibility of patients' charts and the remaining thirteen dealt with the kind of treatment or drugs prescribed or administered to various patients, or the lack of treatment rendered to various patients.

The Discipline Committee determined that the facts set out in eight of these counts were proved. The Committee took the view that, although there was little doubt that Dr.'s practice exhibited certain deficiencies in therapeutics and that he had been guilty of errors in judgment, his level of practice was not below the standard of medicine practised in Ontario. The Committee concluded that, although certain areas of Dr.'s practice were less than ideal, there was a real risk, in cases of this type, in viewing the matter entirely or even primarily from the vantage point of hindsight.

The Discipline Committee therefore found that Dr. was not guilty of professional misconduct and dismissed the charges against him.

5. Dr. was charged with professional misconduct in that in the years 1974 and 1975 he referred a number of patients to S. & M. Laboratories Limited in return for which he accepted the benefit of a leased automobile paid for by S. & M. Laboratories Limited.

After evidence and argument the Discipline Committee found that the case against Dr. had not been made out and the charge against him was dismissed.

5. Dr. Daniel Wong was charged with professional misconduct in that he was convicted of unlawfully trafficking in a narcotic, to wit, Pethidine (ethyl 1-Methyl-4-phenylpiperidine-4-carboxylate) contrary to Section 4(1) of the Narcotic Control Act.

At the commencement of the hearing Dr. Wong pleaded guilty to the charge, and after hearing evidence and submissions with respect to penalty, the Discipline Committee found Dr. Wong guilty of professional misconduct and revoked his licence to practise medicine in Ontario.

7. Dr. was charged with professional misconduct in that, without the consent of his patient, he wrote a letter to the solicitor of his patient's former husband, which letter contained information about the condition of his patient and professional services rendered to her.

Dr. attended the Discipline Committee hearing with Counsel and pleaded not guilty, although he admitted writing the letter, that the letter contained certain

information with respect to his patient's condition, that he did not have his patient's permission to disclose this information, and that the information came to him as a result of his professional relationship with his patient.

After careful consideration the Discipline Committee found Dr. guilty of professional misconduct as charged pursuant to Section 26(21) of the Regulations passed under The Health Disciplines Act.

In light of all the circumstances including the general nature of the information disclosed and the facts that all this information was already known to the previous husband of the patient and considering Dr.'s concern for the welfare of a young child, the Discipline Committee suspended the imposition of a penalty for a period of six months, no other terms being imposed. The Committee also directed that Dr.'s name not appear in the published report of the College.

Report of the Long Term Planning Committee, p. 9

The responsibility and activity of the College of Physicians and Surgeons is defined under the terms of The Health Disciplines Act and its Regulations. It might seem premature to be undertaking further planning subsequent to an Act so recently proclaimed. However, recent experience must tell us that our profession now so intimately associated with social legislation in health matters is in the midst of a scene which is subject to rapid change. Such changes involve not only those which are taking place in clinical medicine but those taking place in the organization and provision of health services and in the expectations of the public in the provision of those services.

The Health Disciplines Act states clearly the objects of the College of Physicians and Surgeons in Section 46(2) as being:

- 1) to regulate the practice of medicine and govern its members;
- 2) to establish, maintain and develop standards of knowledge and skill;
- 3) to establish, maintain and develop standards of qualifications and practice;
- 4) to establish, maintain and develop standards of professional ethics;
- 5) to administer Part III of the Act relative to the Practice of Medicine;
- 6) such other objects relating to human health care as the Council of the College of Physicians and Surgeons considers desirable.

However, Subsection (2) of Section 46 clearly enunciates that these objects are established "in order that the public interest may be served and protected".

A. A. Klass in 1965 discussed a clear distinction in professional organizations between what he termed "Associations" and "Societies". The Association was a professional organization of a benevolent type made up of professionals with a common and mutually beneficial purpose

8. Dr. was charged with two charges of professional misconduct in that, between 1973 and 1975, while engaged as Chief Pathologist at General Hospital, Toronto, he continued to use laboratory facilities, staff and materials at the hospital to process his own private cytology after his right to do so had been terminated by the hospital and that he attempted to mislead the hospital into believing that he had stopped going and had not done such work in the hospital, all of which was alleged to be misconduct in a professional respect.

At the hearing Dr. appearing with Counsel, pleaded guilty to the charges and was reprimanded by the Discipline Committee. In addition, the Committee ordered that Dr.'s name not be published in the report of the College.

which worked primarily for the benefit of its members. The Ontario Medical Association is an example of such an organization which plays an important and vital role for the profession when public policy is being determined. Since pragmatically such policies are a product of many inputs from what might be termed self-interest groups.

The "Society" on the other hand was a professional organization in the profession whose primary function was not the protection of its members, but the maintenance of a code of standards for the protection of the citizens of the state. The College of Physicians and Surgeons fits such a role and it is defined under the Provincial Statute. The Statute goes further in that it defines a mechanism of accountability required of such a professional organization. Such a safeguard was influenced by the McRuer Report and led to the appointment of lay individuals to the Council as well as an establishment of an appeal or review mechanism for some of the actions of the College by means of The Health Disciplines Board.

The distinction between these two concepts of professional groups is simply not understood by the majority of the public and unfortunately little more appreciated by our own members. The clear demonstration that this College serves the public interest is essential if we are to remain credible in the eyes of the public. Without adequate communication, the public interest although being well served may not have the appearance of being well served. It is important that this appearance be made and to do so will require openness in our dealings and free communication with both the public and the profession. Our relationships with the profession are also in need of improvement. We must make sure that the profession really understands, appreciates and supports our role which is one of internal government and self-regulation. We must be positive in communicating our position in all matters. We must be just as visible and just as strong in defending good practice as we are in condemning

poor practice. In short, with both the public and the profession, we must have a persistently and consistently higher profile.

Dr. Bette Stephenson discussed the Self-Governing Professions in an address to the Ontario Association of Architects in February of this year. She was emphasizing the need of the profession to become more communicative when she said "The profession like any institution can drift away from those it is designed to serve into isolation. When that happens, the public sees the professional not as an ally but as an adversary."

"Speak out. To the public you say everything when you say nothing. There is eloquence in your silence."

The standards of our profession are not static, they must change not only as clinical medicine changes but also as the public we serve comes to sense or expect the need for such change. Our basic responsibility is the protection of the public interest with respect to the practice of medicine. Our mechanism in providing such protection is the setting of and maintaining standards for the practice of the profession. Despite the wide ranging discussions of our Committee, we found ourselves returning to this basic function as the core of our self-governing role. It is the heart of our professionalism.

The security of the College as a repository and guardian of professional standards depends on the confidence of both the public and the profession. This role will pass from us if we lose our credibility with the public or if the profession simply doesn't care. It is clear to the Committee that our College must be more positive in its role and more visible to both the public and the profession. This important stance is common to many of the specific recommendations contained in this Report.

A. COMMUNICATION

Recommendation 1: That the College develop a communication system with the aim of providing a monthly publication outlining the activities and policies of the College.

The principal method of communication with the profession is our Annual and Interim Reports. This, in practical terms, is also a prime method of public communication as such reports are not confidential documents nor is it appropriate that they should be. By virtue of long intervals between such reports, matters of complaints and discipline assume a major component of the report, and issues on occasion have lost their timeliness. It was the feeling of the Committee that frequent, short, regular reports of College activity are required which will allow timely release of information, reflect the openness of our dealings to the profession and the public, and fulfill an educational function to both by regular exposure of our activities. The Committee is not recommending discontinuance of the current publications but feels that under such a system, the major publication could contain a fuller discussion of the substantive issues which we deal with. In making this recommendation, the Committee is aware that substantial resources will be required and that a significant and identifiable portion of the College budget will have to be designated. However, it is our

opinion that the College cannot maintain a low profile and at the same time expect to be seen to be protecting the public interest. Full and open disclosure of the workings of the College in a positive manner will be necessary, and good communication is required to improve the appreciation of our role by both the public and the profession.

Recommendation 2: That the College adopt as a matter of policy the requirement that the affairs and functions of the College be conducted with complete openness to the end that the public interest appears to be served as well as actually being served, and that without limiting the generality of the foregoing, the College adopt the policy of publishing all the names of practitioners found guilty of professional misconduct.

A recent decision of a discipline panel not to publish the name of a member found guilty of professional misconduct attracted considerable public interest and the College was placed in a very unfavourable light by the press and other interested parties by its refusal to give out this information. Such a stance cannot be seen to be in the public interest, and threatens to discredit the purpose and therefore the existence of a self-governing body. Secretiveness and lack of candor in a body set up to protect the public interest is simply not a tenable policy in today's society. At the same time, confidentiality as contemplated in Section 65 should and can be maintained.

Recommendation 3: That the functions of the College be brought to the attention of all members of the profession in a positive manner by means of College publications, and that a method of positive description of College functions to all medical students during their undergraduate studies be determined.

The College of Physicians and Surgeons no longer controls curricula in medical schools. Although each school has a component of instruction in this area, it is felt to be variable in time and content. We do, however, have strong ties by means of our university representatives and there is a mechanism whereby the College can have an educational input to the senior students.

College publications should demonstrate the initiatives of the College and members of the profession in serving the public interest. Credit should be given and taken where due.

Recommendation 4 was reproduced above at p. 417.

B. MANPOWER STUDIES

Recommendation 5: That the College collect manpower data of the type presently being collected, that this data be stored within the College, that access be at the discretion of the Council of the College, and that individual confidentiality be maintained.

The Committee's discussion of this issue was undertaken with the knowledge that Council has already had considerable debate on this issue. It is our feeling that such data

collected and available to the College may be very important in "the protection of the public interest", and that a clear statement of policy with regard to our role in medical manpower was needed. There was agreement that the College had a responsibility to collect information considered essential to determine the current and future levels and deployment of medical manpower in Ontario.

The government can gather information from other sources, but it is generally conceded that this would be less reliable, and less current than the method proposed by the College.

It is not inconceivable that proposals for the delivery of service and the deployment of physicians will be forthcoming. This College should be in a position to make a judgment about such proposals. Furthermore, this College may be required to speak out on such proposals if they contravene the public interest in the provision of professional medical services. If the College should have to take such a position in the future, their position would be a strong one only if their data base was accurate, and only if our position could clearly be defined in the interest of the public and not the profession. To return to our original theme, of paramount importance is our credibility and public confidence.

C. NEW PROCEDURES OR THERAPIES

Recommendation 6: That a small three member committee be established to consider problems raised relative to new modalities of practice and new therapeutic agents. This committee would be free to enlist the expertise of authorities in the field and using this information advise the Executive Committee as to the position the College should take.

The Committee felt strongly that the College should identify its position with regard to new modalities of treatment and therapeutic agents. As an example, as the body vested to preserve the public interest in medical practice, we have not taken a position on the use of Laetrile. It is recognized in some instances that the timeliness of such statements would be of particular importance and it would be important for the College to respond quickly and authoritatively to situations as they arise.

On the other hand, there is no reason that such statements could not be anticipatory in nature. They would be directed to the profession as a regular educational release via a monthly College publication. They would also be useful to the public as constituting a statement from the body responsible for their protection.

At the present time, this is done on an ad hoc basis by College officers having obtained appropriate advice, and also by the Medical Review Committee in making judgments on the medical necessity of services when a case has been presented to them by OHIP (e.g. HCG). It has also occurred in a more organized fashion by the Executive and Council (Acupuncture). It was our feeling that an on-going review, with wide circulation of individual items would be helpful to the profession and would produce a broader "College

opinion" than through the Medical Review Committee or ad hoc mechanism, and also we feel demonstrate to the public that we do act in a positive fashion to their safeguard and benefit.

This position should not be construed as preventing practitioners from applying new modalities of therapy as long as they pose no significant hazard to an informed patient. Nevertheless, surely the College should not shrink from making a judgment pro or con about the efficacy of such therapy based on the opinion of experts.

The make-up of the committee should be chosen to bring real expertise to bear. We would suggest one member should be a clinical pharmacologist.

D. LICENSURE

Recommendation 7: That the Education Committee carefully examine the following.

1. A straight internship is insufficient training for a General licence.
2. Licensure be granted to physicians taking straight internships, but only after certification by the Royal College of Physicians and Surgeons of Canada.
3. The Education Committee carry out studies to determine competence for a General licence after one or two years of training.

The Committee were made aware of the current activities of the Education Committee, but were not prepared to take a firm position on the preregistration training period. However, they feel certain issues required clarification. This recommendation is supportive of the Education Committee plans for studying a variety of pre-registration routes.

They did feel, however, that the expectations of the experience gained in clinical clerkships which were held at the time of institution of that program had not been met. Consequently, this recommendation is designed to urge the Education Committee to address themselves to this issue.

E. PEER REVIEW

Recommendation 8: That a proposal for a pilot study of peer review programs be taken by the College to the districts for discussion. The initial methodology and ground rules for peer review should be outlined and the non-punitive educational nature of the outcome be guaranteed.

Knowing that peer review will be the subject of a report by a separate committee, this topic was not discussed in depth. The proposal placed before Council in April of 1977 was supported in principle and the discussion focused on ways and means of introducing such a program.

In the present climate, any activities which could be interpreted as additional controls would likely engender resentment. It would therefore be necessary to present a proposal for peer review in a positive manner with emphasis on the educational purpose and the benefits to be gained by the profession. It was felt that a pilot study would be required to obtain evidence to support a peer review program, and

that persons taking part in such a study should be protected from punitive measures. The possibility of working with the Unitario Council of Continuing Education for developing the educational components of the program should be explored.

It will be the responsibility of the College to gain the acceptance and support of the profession for such a program. To this end, the Committee feels that any such proposal should be discussed widely among members to allow their input. A mechanism for a district-by-district discussion should be arranged.

F. DELEGATION OF MEDICAL ACTS

Recommendation 9: An act declared by the College to be a medical act can be done by a non-medical person when the College has approved the training and the assessment of the proficiency of these persons to perform the act.

The Committee reviewed current mechanisms and current problems in delegating medical acts. Historically, the growth of paramedical individuals has been rapid and necessary. It is a situation which is far from static as the technology of medicine advances, and as other professions develop and change or seek to change their role.

It is our view that the College should not be seen to be defensive in the use of this mechanism, since modern practice already has fostered such developments. The recommendation is designed to enunciate a policy whereby our profession can safely sanction such delegation. It is stated to assure the public that such individuals have been trained in a program which this College has reviewed and approved and that the demonstration of their proficiency has been by a method which this College has reviewed and in which it has credence. It is meant to imply that medical professional input plays a significant part in the training and assessment components of such programs.

G. THE SIZE OF COUNCIL AND COUNCIL ASSISTANTS

Recommendation 10: That Council increase its size to the maximum allowed by The Health Disciplines Act.

In considering the current activity of Council, and in particular, the accelerated activity expected with new programs, the Committee felt that there was a need now to make use of the current provision under the Act for increasing the number of members participating in the direct activities of the Council. At present, Council consists of 5 university representatives, 12 elected members and 4 persons appointed by the Lieutenant Governor in Council, for a total of 21. The maximum permissible under the present Act is 5 university representatives, 16 elected members and 6 persons appointed by the Lieutenant Governor in Council, for a total of 27.

They did so after discussing a number of mechanisms which might be available to lighten the increasing load on individual councillors short of changing Council's size.

However, the provision that councillors must staff all statutory committees and the obvious desirability of having direct Council input into other committees brought us finally to this recommendation. Certain committee appointments pose particularly heavy loads (Discipline) and increased Council manpower would allow construction of further panels.

There is also an advantage of increasing the Council presence in districts if more councillors are available.

Recommendation 11: A system of appointing College assistants in each district be instituted, taking into consideration geography, specialty and profession, and/or public esteem. The number suggested from each district is not to exceed four. Each appointee would be expected to make a time commitment to the College.

This recommendation has two purposes. First, it could assemble a cadre of members with a real interest and commitment to the College who could by their diversity assist the Council in ad hoc committees, hospital assessment, special assistance teams, and inspections. By being involved in a continuing way, they would quickly become knowledgeable with the workings and responsibilities of the College. Secondly, they would act as District Council Assistants with whom their Councillor could communicate first hand topical information from the College for further dissemination in the district, and the group (the councillor and his assistant) would be a more visible "presence" of the College in each district. Communicat on with the profession at a local level would be improved.

H. PERIODIC REVIEW OF COLLEGE COMMITTEES

Recommendation 12: That a periodic review by Council of Statutory Committee functions on an on-going regular basis take place.

The Statutory Committees of Council reflect its major activities and responsibilities. Each reports twice a year to Council on its proceedings. Council therefore has an opportunity to monitor such activities on a regular basis.

What we are recommending is for instance that one committee per year be reviewed by Council, possibly by a councillor not associated with the committee. Such a review would not just look at the day-to-day operations of the committee, but might well comment on the effectiveness of the committee, whether its purpose or its needs are changing or should change, whether its stance is appropriate to the times and so on. We are aware that although we are bound by an Act, there is a hazard that a committee (even a changing one) might become if you like, set in its ways, preoccupied with the problem of the day and not see the need for changing methods or approaches. Such a periodic review would be helpful in producing a fresh, outside overview of these important functions on a regular basis.

During its deliberations, the Committee quickly became aware that much long term planning had already gone on. In

particular, the Ad Hoc Committee on Peer Review and the Education Committee have long term projects under consideration. We are also aware of the planning which went on and was initiated by Council to improve the Discipline procedures, subsequent to the Henry report.

We are also aware that some of our recommendations do not constitute long term planning, but are attempts to firm up principles by which the College functions, and which have long term implications.

One of the strongest theme of these recommendations is the proposition that the significance and value of this College as the repository of authority in a self-governing profession needs serious up-grading in the eyes of the public and our own profession. It is our opinion that a vigorous effort in communicating our role to the public and the profession must be undertaken. This is not to be interpreted as an "advertising campaign", but as an "information campaign".

Report of the Peer Assessment and Education Committee, p. 15.

The Committee on Peer Assessment and Education, which was created by motion of Council 5-C-4-77 in April 1977, spent considerable effort in studying the very involved and difficult job assigned to it. You will recall the terms of reference given the Committee.

TERMS OF REFERENCE:

"The Committee will consider all aspects of the institution of a peer assessment program, to include criteria to be used, types of persons serving as assessors, decision-making procedure within the College, personnel and financial implications for the College and necessary amendment to legislation. The Committee shall also consider how such a program could be integrated with present College activities of peer review, and shall report with recommendations to the Council in November, 1977, having given the Executive Committee an opportunity to comment upon any recommendations prior to the Council meeting."

The Committee studied a large amount of material in the medical literature, and held detailed discussions with representatives of the Corporation of Physicians of Quebec, who are involved in the operation of a program designed to ensure ongoing competence of Quebec physicians. In addition, the members of your Committee discussed the philosophy of this type of program with many colleagues, and brought ideas and opinions from these contacts to the deliberations of the Committee.

The Committee became convinced that some type of program to ensure competence is required, if the College is to fulfill its responsibility to the people of Ontario, but it was also convinced of the necessity for a carefully and logically designed program, rather than a complete but hastily framed answer to the Council. Accordingly, the Committee was not able to consider all the matters within its terms of

We are also aware that these recommendations have significant implication with regard to cost and to space. Although we make no specific recommendations in this regard, we urge that this reparative process be regarded as a high priority, and recommend that the mechanism and resources required to do so be facilitated by Council.

The Report of the Committee as a whole was accepted by Council, and the Executive was directed to study and implement Recommendations #1, #3, #4 and #6, and to determine ways and means to proceed with the other Recommendations.

reference, since it was felt that until some evidence was obtained as to the utility of such a program, integration into College peer activities, cost, and details of the administration of a program of this type, could not be properly defined.

The Committee agreed that the purpose of Peer Review in a general sense is to ensure that an acceptable level of competence is maintained by all physicians licensed to practise medicine in Ontario.

The Specific Objectives of Peer Review were considered to be as follows:

1. To identify physicians who are practising at an unacceptable level in general, or in specific areas.
2. To designate remedial actions to correct the deficiencies identified.
3. To ensure that the remedial actions have been effective.

The Committee looked at the alternatives of relicensure, examination, compulsory continuing education requirements, self-evaluation computer examinations, and is of the opinion that an on-site inspection by a peer or peers was the only method likely to accomplish the objectives. Whether or not this method could meet the objectives could only be decided after experience was gained with such a program.

Accordingly, the Committee was in favour of the College organizing a pilot study, to be designed as a feasibility program, to gain experience in on-site peer assessment. It was the feeling of the Committee that this project must be non-punitive in nature, and aimed at accomplishing the following:

- a) determining whether or not the findings of the program validate the need for a program of this type at all;
- b) determining whether the information obtainable in a peer on-site assessment is adequate to identify unacceptable levels of practice;

- c) devising and validating a standard reporting system as a tool to be used by peer assessors;
- d) attempting to determine whether this type of on-site peer assessment should be done by part-time peers in practice, or whether full-time assessors would be preferable; and
- e) ascertaining the kind of educational program that would benefit any physician identified as practising at an unacceptable level.

The Committee feels strongly that assessment reports should be reviewed by a College committee appointed for the purpose, and that any decision as to necessary remedial education, or other action, must be the responsibility of that Committee. It is anticipated that if any decisions were contemplated that necessitated action interfering with a physician's practice, that the physician concerned would be interviewed and the matter discussed in detail with him.

It was the opinion of the Committee that for the pilot project, a random sampling of the profession should form the basis of the sample, and that in addition, a random sample of physicians who practise in isolation from colleagues and/or hospitals should be included. The inclusion of this specific group of physicians is based on the experience of the Quebec program, which has found within its ranks a relatively high need for remedial educational assistance.

The Committee was sensitive to the need that a program of this type would have to be shown to the profession as desirable and necessary, and above all, as fair and helpful to the profession. The Committee felt that the profession should be told of the College's intentions, and asked, not whether they agree with the principle, but for suggestions as to how the program could be designed as fair, accurate, and effective.

The emphasis has to be on the educational role of the

program, with the assurance to the profession that it is not designed as, and will not be used as, a method of grading for physicians into categories of competence, but is specifically aimed at the identification and correction of an unacceptable level of practice.

The Committee, therefore, would make the following recommendations:

1. That the Council approve the institution of a pilot project on peer assessment, using on-site peer evaluations.
2. That a committee be struck by the Executive Committee to organize the pilot project, with particular respect to
 - i the format of the on-site visit,
 - ii the design of the reporting form,
 - iii the determination of means of acquiring input by the profession with respect to procedures and methods, and
 - iv the formulation of recommendations with respect to support staff, and a proposed budget.
3. That a budgetary allowance of \$100,000 be allocated in the 1978 budget of the College to fund the pilot project, in its initial phase, until a more detailed budget is approved.

The recommendations of the Committee were accepted by Council, with the addition of a fourth item:

4. That an initial information program directed to the profession explaining the reasons for this pilot project be instituted in advance of the pilot project.

The new committee will report to Council with a planned program, for approval, prior to any action.

If members of the College have any proposals or comments which they feel might be germane to the responsibilities assigned to this committee, these should be directed to the Registrar.

NOTICE

During the past year the College has received a substantial number of complaints relating to what is alleged to have been improper conduct on the part of a physician while carrying out a gynaecological examination.

None of these complaints after being considered by the Complaints Committee have been referred to the Discipline Committee for a hearing. In one instance, the case was referred to the Health Disciplines Board, as the complainant disagreed with the decision of the College. After reviewing the material available to the Complaints Committee and questioning the complainant and the physician concerned, the Health Disciplines Board confirmed the decision of the Complaints Committee of the College.

It should be pointed out that while the circumstances surrounding these incidents may vary, the examination having taken place in a physician's office, the patient's home, and even in an out-patient department of a hospital, in all cases there was no third party present.

While the College recognizes that it may not be practical to have a third party in attendance in all instances during a gynaecological examination, it nevertheless wishes to draw to the attention of the members of the College that it would be wise for all physicians to exercise discernment in determining those situations where such a precaution would be advisable.

Report of the Medical Review Committee, p. 17.

Since the last meeting of this Council, the Medical Review Committee has met on fourteen days for regular meetings in addition to its hearings and hearings before the Health Insurance Appeal Board. During that time 59 new referrals have been considered and in addition, 42 reports of medical and financial inspectors appointed by the Committee to obtain further information regarding referrals previously received have been reviewed. Thirty-nine doctors have been interviewed and tentative decisions made. It would be a fair assessment to make that while the volume of work of the Committee remains approximately steady since our last report, the nature of the cases which happen to have arisen during this period of time may have been somewhat more complex and protracted than is usual.

Certain matters which have come to the Committee's attention in the course of their review of accounts referred by the General Manager of the Health Insurance Plan deserve to be brought to the attention of Council. The Committee has been concerned with a significant number of accounts for the service of psychotherapy which have been rendered in circumstances which inspection suggests do not meet the Committee's view of what is an appropriate standard of practice for psychotherapy in Ontario.

The Committee looks to and accepts the O.M.A.'s definition of psychotherapy as set out in the Schedule of Fees, namely "any form of treatment for mental illness, behavioural maladaptations and/or other problems that are assumed to be of an emotional nature, in which a physician deliberately establishes a professional relationship with a patient for the purposes of removing, modifying, or retarding existing symptoms, of attenuating or reversing disturbed patterns of behaviour, and of promoting positive personality growth and development". It will be recognized that this definition provides for a wide variety of treatment modalities. Distressingly, a number of physicians have taken the position that no medical record can or should be kept in the case of psychotherapy. This position appears to be based (a) upon the idea that the patient will not communicate freely with the physician if he knows that a record will ultimately be made of the nature of his problem, or (b) upon the physician's concern about the ultimate confidentiality of these records. On the other hand, the Committee has as a mainstay of peer review reviewed physicians' records in order to obtain evidence that the service has been rendered in appropriate fashion and was of acceptable quality. The Committee does not contend that the review of records in and of itself is the only legitimate tool of peer review but on the other hand, it is fair to say that a review of physicians' practice records in the past has served as a useful way of drawing some conclusions about the quality of the physician's work and the nature of the services rendered. The Committee, therefore, considered the question of appropri-

ate standards for practice records in psychotherapy. The Committee consulted various authoritative professional psychiatric bodies and sought peer opinion with respect to such matters and concluded that the physician should keep normal patients' records as required by the regulations under *The Health Disciplines Act* and that such records ought to indicate and state in some reasonable diagnostic terminology the presumptive nature of the illness or problem being dealt with and some idea of the history of its origin. In addition, it was felt that such records ought to state a plan of treatment or approach to the identified problem together with some rationale for this plan and a presumptive diagnosis. Followup of progress records of psychotherapeutic treatment over lengthy courses, it was felt, should also indicate the patient progress on therapy. The Committee recognized that all of such elements may not appear in the record of the first or even the first few visits in the course of psychotherapeutic contact but it was felt that the application of these criteria reasonably to the whole of a patient's record was in accord with the appropriate standard of practice in Ontario whether for consultants or general physicians.

Your Committee has taken this matter up with the Ontario Medical Association and it is hoped that a reasonable standard can be agreed upon and will form the basis for proper practice in the future. In addition, it is hoped that the fee for counselling recently introduced in the Schedule of Fees can be rationalized into this structure.

Another area of concern recently has been referrals of certain practices in which proctoscopy (not to be confused with sigmoidoscopy or proctosigmoidoscopy) has been a very prominent feature. After soliciting a substantial number of peer opinions in the fields of general surgery and gastroenterology, the Committee was of the view that proctoscopy or anoscopy had no value as a routine screening procedure for the detection of asymptomatic colonic or rectal disease. The Committee took the view that proctoscopy or anoscopy was medically useful for further investigation of significant symptoms or signs relative to the anorectal region and should not be used in the nature of a screening tool in patients without well documented histories, signs, or symptoms suggestive of anorectal disease. For this reason, the Committee could not agree with the position taken by some members that proctoscopy was an essential part of an annual health examination. The Committee was of the belief that the fee for this service should certainly be paid where the signs or symptoms indicated its use. This matter also has been brought to the attention of the Ontario Medical Association by your Committee.

In a similar vein, the Committee was concerned to review a number of practices in which repeated intramuscular injections of vitamin B12 on a weekly or biweekly basis were

administered to patients with no medical indications for this treatment recorded. Peer opinions suggested that aside from certain hypercatabolic states encountered in the practise of cancer therapy and aside from pernicious anemia, the injection of B12 on such a repeated basis is not medically necessary.

The Committee considered the application of acupuncture to the treatment of obesity and smoking and discovered that there are a certain number of practitioners treating patients for these conditions by the application of small humbuck like devices to the posterior portion of the earlobe or by the depositing of small metallic pellets in the external ear canal ostensibly as a form of acupuncture. The Committee was further distressed to find that in a number of practices this was the only modality of treatment ever applied by the practitioner in question. Without exception, these practices always charged a general assessment for every patient seen and there were even cases in which consultations were charged even though patients were, for the most part, self-referred or referred by general physicians as a matter of convenience. The Committee was hesitant to suggest that general assessments prior to the institution of acupuncture were inappropriate for there may obviously be situations in which true acupuncture may be applied by ethical physicians who do require thorough assessment of the patient before applying such a modality. On the other hand, the Committee found it a little strained to accept the proposition that such services were always necessary in the case of the application of these ear tacks or pellets.

The Committee also had occasion to study the techniques of "biofeedback" as they relate to the practice of psychotherapy. It has been observed that the practice of "biofeedback", when based upon galvanic skin resistance, alpha-theta wave monitoring, or eidetic imagery, relies upon the principle that psychological states and certain autonomic nervous functions are related. While this fact has been recognized by physicians for many years, the relationship of the galvanic skin resistance, alpha-theta wave monitoring, or eidetic imagery to internal psychological states and other physiological variables, is not currently established. The Committee concluded that the use of biofeedback based upon galvanic skin resistance, alpha-theta wave recordings, or eidetic imagery to monitor nervous activity levels, internal psychological states, or other physiological variables, is not properly considered to be a medically necessary service at this time. The use of biofeedback in the treatment of migraine headaches, hypertension and vascular insufficiency is still in an experimental stage and the Committee believes that when valid scientific evidence is available that this is an effective modality in the treatment of these conditions, it should be considered a necessary service. In the meantime, the Committee was of the view that such a form of treatment is not medically necessary. Biofeedback treatment, based upon the recording of electromyographic activity or electroencephalographic tracings properly measured to monitor muscular or

cerebral activity for the treatment of neuromuscular disorders and/or epilepsy, was established as a medically necessary service at this point in time.

The Committee was obliged to review a number of anaesthetic practices during recent months in which claims for controlled or induced hypotensions were very high. The Committee considered widespread peer opinion as to the appropriate practise of and necessity for this modality. As with any technique, a list of absolute contraindications could be drawn as well as a list of likely indications. The area in between poses a number of problems in that there are differences of opinion as to the indications for and extent to which hypotension should be used. The Committee considered these criteria and set out its proposal for reasonable indications for this treatment and reasonable standards for its practice. As with all the foregoing, these proposals have been brought to the attention of the Ontario Medical Association and it is hoped, with their assistance, that the matter may be resolved.

Similarly, the Committee was concerned about a number of cases referred to it regarding anaesthetists who billed for almost every newborn patient for anaesthesia at obstetrical confinement, with the extra fee provided for resuscitation of the newborn. The Committee also proposed reasonable standards for differentiating unusual efforts at resuscitation justifying this extra fee from the usual minimal suctioning, mask ventilation and slap on the behind which were felt not to justify extra billing. It is hoped that with the assistance of the Ontario Medical Association this matter may also be clarified for the benefit both of the public interest and the profession.

Since our last report, the Committee has had the unfortunate duty of dealing on behalf of the College with a number of referrals which have brought to our attention practices which no ethical physician would condone. A routine review of several physicians rendering unusually high volumes of nursing home care ultimately revealed large numbers of services which were apparently not being rendered by the physicians in the volume claimed and for which in many cases, apparently illicit records had been created. In another case, the routine investigation of an unusual pattern of practice regarding volume of night house calls revealed a massive pattern of deception on the part of a physician reaching into almost every facet of his practice and affecting not only his honesty of billing but also his quality of professional service.

The review of a number of physicians on the basis of unusually small practice volumes revealed several unfortunate individuals apparently suffering from conditions such as would draw their fitness to practise medicine in question. The Committee has, as has always been its policy, immediately upon discovering such practices which may constitute dishonesty or otherwise affect a physician's fitness to or suitability to practise medicine, referred the matter to the appropriate authorities. In the case of fitness to practise or disciplinary matters, this is the Registrar of the College and in the case of apparent dishonesty, the appropriate police

authorities are notified.

Your Committee has continued to the best of its ability to carry the very heavy load of referrals referred by the General Manager and welcomes in this endeavour new members appointed to the Committee effective September 1977, Dr. Fred L. Johnson of this Council and Dr. John McCabe of the City of Windsor. At the same time, the Committee is very mindful of the extensive contributions above and beyond the call of duty by members recently retired from the Committee and on behalf of the Committee, I wish to express our personal gratitude and urge that this Council express their gratitude to Dr. James F. Ballantyne and Dr. Douglas E. Crowell for their years of diligent and arduous service.

The Medical Review Committee has, during its period of existence, seen difficult times. Indeed this was to be expected when the public interest and service to the profession's interest required the introduction of new concepts and unfamiliar ideas to a medical profession already beset by the effects of social and economic change. Your Committee is cognizant of these difficulties but hopes that in coopera-

tion with this Council and with the Ontario Medical Association, both of whom have so frequently and graciously extended helping hands, that we may continue to demonstrate that the medical profession of this Province is responsibly capable of self-government and self-discipline. It is your Committee's respectful view that a number of changes in the format of its activities may be desirable to prompt these ends and no doubt this Council will have an opportunity to consider those changes. Notwithstanding that, your Committee is of the view that we must somehow make this concept of retrospective peer review work and your Committee rededicates itself to this Council and to the membership of the College to do its utmost in this direction. The alternatives to peer review when examined in the light of the public interest in receipt of optimal health care and the interest of the medical profession in Ontario, are too unacceptable even to receive consideration.

Your Committee expresses its appreciation for your support in the past and looks forward to your input and assistance in the future.

Special Notices, p. 20

Professional conduct of Members

Practitioners are reminded that in entering upon the practice of medicine they undertake a life of service in which the needs and best interests of their patients must always be paramount, and that the self-interest and competitive practices acceptable in commercial enterprises have no proper place in the profession of which they are members.

From the time of Hippocrates there has existed and been developed by tradition a code of professional conduct that exists to the knowledge of all members of the profession quite apart from any written regulations or Code of Ethics that may be drawn up for the guidance of members. The College has adopted the Code of Ethics of the Canadian Medical Association. A copy may be obtained without charge from the Registrar and all members are urged to familiarize themselves with its contents, bearing in mind that the Code is only a guide and does not bind or limit the Discipline Committee of the College in determining whether professional misconduct has occurred. According to the weight of judicial authority the members of the Discipline Committee who are members of the College having knowledge of the traditional standards of professional conduct are entitled to judge whether any offence has been committed that amounts to misconduct in a professional respect or conduct unbecoming a medical practitioner.

Regulations defining professional misconduct

For the purpose of the Medical Part of The Health Disciplines Act, "professional misconduct" is defined in Section 26 of O.R. 577/75, a regulation made by the Council and approved by the Lieutenant Governor in Council. Professional misconduct is defined in the Regulations under thirty-one general categories, as follows,

1. failure by a member to abide by the terms, conditions or limitations of his licence;
2. contravention of any provision of the Medical Part (Part III) of **The Health Disciplines Act, The Health Insurance Act, 1972** or the regulations;
3. failure to maintain the records that are required to be kept respecting a member's patients; (Reference: Section 28 of O.R. 577/75)
4. having a conflict of interest; (Reference: Section 27 of O.R. 577/75)
5. using a term, title or designation other than one authorized or using a term, title or designation that is prohibited by this Regulation;
6. permitting, counselling or assisting any person who is not licensed under Part III of the Act to engage in the practice of medicine except as provided for in the Act or this Regulation;
7. charging a fee that is in excess of the fee in the schedule of fees of the Ontario Medical Association without prior notification to the patient as to the excess amount of the fee;

[NOTE: "prior notification" means notification before the service is performed. It may be given verbally or in writing but a sign in the office is not acceptable.]

8. charging a fee that is excessive in relation to the services performed; (Reference: Principles Governing Proper Professional Charges on page 22)
9. failure to carry out the terms of an agreement with a patient;
10. selling a professional account to a third party; [NOTE: The College does not prohibit the use of credit cards in payment of physicians' accounts.]
11. refusing to render a medically necessary service unless payment of the whole or part of the fee is received in advance of the service being rendered;
12. requiring payment for a service that is insured under **The Health Insurance Act, 1972** as a condition to be met before completing a claim card for submission under that Act or, before providing an itemized account of the services where a request is made for an itemized account by the patient or a representative of a patient;
13. offering a reduction for prompt payment of an account;
14. charging a fee for services not performed;
15. falsifying a record in respect of the examination or treatment of a patient;
16. knowingly submitting a false or misleading account or false or misleading charges for services rendered to a patient;
17. announcing or holding out to the public that the member is a specialist or is specially qualified in a branch of medicine where the member is not qualified as a specialist;
(Reference: Section 22 of O.R. 577/75 governing the recognition of specialists and use of specialty designations.)
18. engaging in the practice of medicine while the ability to perform any professional service is impaired by alcohol or a drug;
19. contravening while engaged in the practice of medicine any federal, provincial or municipal law, regulation or rule or a by-law of a hospital designed to protect the public health;
20. failure to maintain the standard of practice of the profession;
21. giving information concerning a patient's condition or any professional services performed for a patient to any person other than the patient without the consent of the patient unless required to do so by law;
22. failing to continue to provide professional services to a patient until the services are no longer required or until the patient has had a reasonable opportunity to arrange for the services of another member;
23. making a misrepresentation respecting a remedy, treatment or device;
24. failing to reveal the exact nature of a secret remedy

following a proper request for such information;

[NOTE: A "proper request" would be a request made by the College or by a member who is treating the patient.]

25. improper use of the authority to prescribe, sell or dispense a drug, including falsifying a record in respect of a prescription or the sale of a drug;
[NOTE: A member who sells or dispenses a drug to his patient shall comply with the provisions of Section 27 and Sections 29 through 38 of O.R. 577/75 relating to the prescribing, dispensing and sale of drugs by members.]
26. failing to provide within a reasonable time and without cause any report or certificate requested by a patient or his authorized agent in respect of an examination or treatment performed by the member;
27. failing to carry out the terms of an agreement or contract with a hospital;
28. sexual impropriety with a patient;
29. sharing fees with any person who has referred a patient or receiving fees from any person to whom a member has referred a patient or requesting or accepting a rebate or commission for the referral of a patient;
30. publishing, displaying, distributing or using or permitting, directly or indirectly, the publishing, display, distribution or use of any advertisement related to the practice of medicine by a member other than,
 - (i) professional cards that contain only the name of the member, a vocational designation, academic degrees, the member's address and telephone number,
 - (ii) an announcement upon commencing practice or changing the location of a member's practice that,
 - a. does not exceed two standard newspaper columns in width and ten centimeters in depth,
 - b. does not contain references to qualifications, procedures or equipment but may contain academic degrees, and
 - c. does not appear more than three times in a newspaper in respect of the commencement of the practice or of a change in the location of the practice,
 - (iii) appointment cards that do not contain more than the information contained in a professional card and the time and date of the appointment or appointments,
 - (iv) a telephone directory listing,
 - a. in the white pages that,
 - i. is of dark or light type,
 - ii. where a member is a certificated specialist, may indicate the specialty designation,
 - iii. where a member who is not a certificated specialist restricts his practice to one branch of medicine may insert after his name "Practice limited to
 - iv. does not list office hours, and
 - v. where the practice of medicine is carried on

as a partnership, clinic, medical centre or other form of medical group lists the name of the partnership, clinic, medical centre or other form of medical group and the names of the members with their designations if a member,

b. in the yellow pages that,

- i. is listed only in the section "Physicians and Surgeons";
- ii. is only of light type;
- iii. where a member is a certificated specialist may indicate the specialty designation;
- iv. where a member who is not a certificated specialist restricts his practice to a branch of medicine may insert after his name "Practice limited to";
- v. does not list office hours;
- vi. is listed only in the telephone listing for the geographical area in which the member is engaged in the practice of medicine; and
- vii. where the practice of medicine is carried on as a partnership, clinic, medical centre or other form of medical group lists only the name of the partnership, clinic, medical centre or other form of medical group and lists the names of the members in their alphabetical order in the yellow page section;

31. conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional O. Reg. 577/75, s. 26 Q. Reg. 631/77.

Principles governing proper professional charges

1. Any agreement between physician and patient or representations made by the physician to a patient as to the physician's professional charges should be reasonable. The physician shall scrupulously carry out the terms of any such agreement or representation.
2. The professional charges of members of the College should take into account and be governed by the following factors:
 - (a) The qualifications and professional standing of the member.
 - (b) The degree of skill exhibited.
 - (c) The time required in rendering the service.
 - (d) The circumstances in which the services were rendered—office, home, hospital or elsewhere; day or night, emergency or routine.
 - (e) The responsibility involved.
 - (f) The attitude and demands of the patient.
 - (g) The geographical area in which the services are rendered.
3. Under the provisions of Section 26 of O.R. 577/75 the following are defined as "professional misconduct",
 - (a) charging a fee that is in excess of the fee in the schedule of fees of the Ontario Medical Association

without prior notification to the patient as to the excess amount of the fee,

- (b) charging a fee that is excessive in relation to the services performed,
- (c) failure to carry out the terms of an agreement with a patient.

Use of Specialty Designations

Section 22 of O.R. 577/75 provides that, a member to whom a certificate in a specialty has been issued by The Royal College of Physicians and Surgeons of Canada may use a designation for the specialty approved by The Royal College of Physicians and Surgeons of Canada.

It has been the policy of the College of Physicians and Surgeons of Ontario that those Certificated by the Royal College and who by training are qualified to practise in a field not included in the Royal College designations, may use one of the generally recognized designations, e.g. cardiologist, allergist, etc.

In Section 26 of O.R. 577/75 announcing or holding out to the public that the member is a specialist or is specially qualified in a branch of medicine where the member is not qualified as a specialist, is defined as professional misconduct.

Students of Ontario Medical Schools entitled to perform services

Section 52 of **The Health Disciplines Act** provides that "no person shall engage in or hold himself out as engaging in the practice of medicine unless he is licensed under this Part". But the Act goes on to provide that this prohibition does not apply to a student of medicine engaging in a curriculum of studies at a medical school in a university in Ontario. This exemption does not apply in the case of a student of a medical school outside Ontario who is employed as a summer "intern", clinical clerk or extern by a hospital in Ontario unless he is enrolled as a student in a faculty of medicine in Ontario.

Prescribing privileges of Interns

An intern registered on the Educational Register may write prescriptions only for the in-patients or out-patients of the hospital or teaching practice in which he is training. He is not permitted to purchase, order or possess Narcotics, or Controlled Drugs; nor is he permitted to order or receive complementary samples of these drugs.

Disciplinary action by a Hospital

The Public Hospitals Act, R.S.O., 1970, c. 378 as amended by 1972, Chapter 90 provides that:—

"Section 40. Where

- (a) the application of a physician for appointment or reappointment to a medical staff of a hospital is rejected by reason of his incompetence, negligence or misconduct;
- (b) the privileges of a member of a medical staff of a hospital are restricted or cancelled by reason of his incompetence, negligence or misconduct; or

(c) a physician voluntarily or involuntarily resigns from a medical staff of a hospital during the course of an investigation into his competence, negligence or conduct,

the administrator of such hospital shall prepare and forward a detailed report to The College of Physicians and Surgeons of Ontario, 1972, c. 96, s. 22."

Cancellation of Licence for Default of Fees

Section 47 of **The Health Disciplines Act, 1974** authorizes the cancellation of a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and the intention to cancel the licence.

Members are cautioned that the Act states that "no person shall engage in or hold himself out as engaging in the practice of medicine unless he is licensed under this Part"

Penalty for non-payment of Licence Fees

Members are reminded that during the period a licence is cancelled for non-payment of fees the former member may not charge fees for services rendered to patients during the period of cancellation, and fees already paid to the physician for services during the period of cancellation are subject to recovery by OHIP or patients. This can be a severe penalty if the time period involved is of any length.

The cancelled licence may be re-issued upon payment of the fees that were due and an additional fee of \$25.00. The date of issuance of the licence will be the date upon which these fees are received by the College.

Expiry Date of Licences

Each member's Certificate of Licence shows the date upon which it expires. Those whose surnames begin with one of the letters A to L hold certificates that expire two calendar months after their birth dates in even-numbered years, e.g. 1976. Those whose surnames begin with one of the letters M to Z hold certificates that expire two calendar months after their birth dates in odd-numbered years, e.g. 1977.

Resignation of Membership

A member who ceases to practise in Ontario may resign his membership by filing with the Registrar his resignation in writing and his licence is thereupon cancelled subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of his professional conduct while a member.

Before re-entering practice in Ontario a former member is required to re-apply for a licence and must comply with the requirements set out in the Regulations governing the issuance of that class of licence. The applicant is not authorized to practise in Ontario until the licence has been issued.

Employment of a Locum Tenens

Before engaging a locum tenens a member should obtain assurance from the College that the prospective locum is eligible for a licence to practise in Ontario, and is in fact licensed before he commences to practise.

Dispensing Fee

The College does not consider it to be a conflict of interest situation for a physician to charge a dispensing fee, as laid out in the OMA tariff, in circumstances where he provides a drug to a patient.

Physicians Listing in Regional Directory

Members are advised that announcements concerning physicians which appear in any publication other than those permitted by the regulations will be considered as advertising by the College.

Advertising Guidelines

The following guidelines have been developed to assist Officers of the College in responding to inquiries which relate to advertising and the soliciting of patients.

1. Signs

- (1) A sign should be "in good taste" and not in contravention of any municipal by-law or ordinance. A sign may be illuminated if municipal by-law permits, but not "flash-ing".
- (2) For an individual practitioner, a sign not more than 36 inches long and 8 inches high would appear to combine the best features of clarity and dignity.
- (3) The maximum height of lettering of signs should not exceed four inches. Lettering on doors and directories should not exceed two inches.
- (4) Contents of signs may contain only the name of the member, academic degrees, and a vocational designation.

Academic degrees include those granted by the Medical Council of Canada, The Royal College of Physicians and Surgeons of Canada, and The College of Family Physicians of Canada.

Vocational designation of a specialty may be used only when a member holds Royal College qualifications in that specialty. A member may designate that his practice is "limited to" one branch of medicine.

- (5) Office hours may be placed on the door or on an adjacent window of the office.
- (6) For medical clinics, centres, groups, etcetera, the sign may include the name of the clinic, centre or group. The maximum size of the lettering on the sign should not exceed 12 inches.
The names of the members of the group may be listed on a directory panel showing their vocational designation. The maximum height of lettering on the directory panel should not exceed two inches.
- (7) Where a proposed sign does not comply in all respects with the aforementioned guidelines, it may be helpful to seek the approval of the local medical society.

2. Professional Cards

- (1) The inclusion of office hours, and any limitation of practice is acceptable on professional cards.

3. Announcements upon commencing practice or changing location

- (1) It is considered in the best interests of the patient for a member to advise those under active treatment and seen within the previous six months of a change in office location. It is left to the member to determine the most appropriate means of communicating this information. Where a physician leaves a clinic or group practice, he would be well advised to obtain the agreement of his partners on the list of patients to be notified.

4. Appointment Cards

- (1) In addition to the physician's name, qualifications and location, it would be appropriate to include office hours, phone number and any limitation of practice on appointment cards given to patients.
- (2) To comply with the Preamble of the Ontario Medical Association Schedule of Fees, advice regarding charges for missed or cancelled appointments is permitted on appointment cards.
- (3) The recall of patients by telephone is permitted only to remind patients receiving specific treatment of an on-going nature of a pre-arranged appointment.

APPENDIX IX - REPORTS OF THE LAY OBSERVER (U.K.)

**FIRST ANNUAL REPORT OF THE LAY OBSERVER UNDER SECTION
45 OF THE SOLICITORS ACT 1971**

*To the Right Honourable the Lord Elwyn-Jones,
Lord High Chancellor of Great Britain*

I have the honour to submit my annual report for my first year in office, which began on 17th February 1975.

2. Your Lordship appointed me Lay Observer in the exercise of your powers under section 28A of the Solicitors Act 1957 (a new provision added in 1974 and now re-enacted in section 45 of the Solicitors Act 1974). Under your statutory powers your Lordship has also given general directions to me about the scope and discharge of my functions. Section 45 of the Solicitors Act 1974 and the general directions under that section are set out in Appendix I to this report.

3. Under section 45 it is my task "to examine any written allegation by or on behalf of a member of the public concerning The [Law] Society's treatment of a complaint about a solicitor or an employee of a solicitor made to the Society by that member of the public or on his behalf". I am also required by paragraph 6 of the general directions to submit to your Lordship an annual report on the discharge of my functions.

4. In relation to my functions I wish to emphasize two points. Firstly, my principal task is to examine The Law Society's treatment of a complaint against a solicitor, not to examine the complaint itself. Nevertheless, it is inevitable that in carrying out this task I should satisfy myself about the true nature of the complaint and in this sense I am bound to examine it. Secondly, I have given a liberal interpretation to the requirement to report on the scope and discharge of my functions, for although my principal function is a limited one, in exercising it I have gained impressions and formed ideas ranging far outside the narrow field of the investigation of complaints relating to professional conduct.

REVIEW OF WORK DONE DURING THE YEAR

5. 437 correspondents have represented their problems to me. About one-third of these have raised matters which had been, or were subsequently, represented to The Law Society as complaints about a solicitor's conduct. The remainder have made criticisms or requests for information on a wide variety of subjects within the whole process of law which have been outside my statutory powers to examine. Where appropriate, I have referred these complainants to other authorities or organisations.

6. 17 allegations have concerned complaints which proved to have been determined by The Law Society before 1st January 1975. In these cases I limited myself to ascertaining from the Society whether the determination had been made before that date. Three cases where the determination seemed incomplete were referred back to The Law Society and resolved.

7. In 162 cases I have made enquiries into The Law Society's treatment of a complaint and in 140 I have completed my examination.

8. In 26 of the cases which I have examined, I invited The Law Society to seek, or myself sought, further observations from solicitors where I felt fuller

explanation was required or desirable for the complainant. In 13 cases I informed The Law Society that I felt its treatment incomplete but in 11 of those cases I agreed with its eventual decision that an issue of conduct was not in question or substantiated. In two cases I recommended that the Society should reconsider the complaint as raising an issue of professional conduct and in both cases the Council of the Society subsequently informed the solicitors that their conduct was deprecated.

9. I have not sent solicitors copies of my case reports where the issues have clearly not concerned conduct and The Law Society has not previously communicated with them, unless there seemed to be a positive advantage in doing so.

10. I have seen 60 individuals in personal interview and have helped some to understand what complaints The Law Society has power to investigate and (I hope) helped some to decide on priorities for action.

THE LAW SOCIETY

11. Strictly speaking, my function is limited to examining The Law Society's treatment of complaints about a solicitor's conduct and, as indicated above, I have found relatively little cause for criticising the way in which the Society has carried out its responsibilities within its powers.

12. No allegation has been made to me that outright financial dishonesty has been incompletely considered by the Society (save one where the Society had already initiated disciplinary proceedings and a few where dishonest motives were inferred from facts which plainly gave no grounds for such an inference). This negative experience leads me to feel that The Law Society is thorough in dealing with these serious matters.

13. I have found it very difficult to gauge what is a reasonable time for The Law Society to deal with a particular case. I have on occasions urged swifter action when an undecided complaint is referred to me and there have been cases when I have been aware that the Society has been overwhelmed by the volume of correspondence, the mass of documents or the number of alleged misdeeds. In complaints which traverse various matters, not all within the Society's scope to consider, it is for the Society to judge how extensive its investigations should be: it is not always possible to dot every i and cross every t. In a number of these multiple complaints I have sought the solicitors' further comments or criticised details of the Society's treatment, without disagreeing with its overall determination. Occasionally I have felt that the Society should have reached its decision earlier than it did.

14. I have seen cases of protracted correspondence between The Law Society and complainants who continually rephrase or add to their complaints, with the result that the solicitors have difficulty in giving precise answers. This is an unsatisfactory but inevitable consequence of the system of written representations. From my limited experience it is my impression that much of the work of The Law Society would be reduced and speeded up if the public had a greater understanding of the law and legal processes—a matter to which I return later in this report—and if every solicitor were to give his client early and sufficient explanations of the issues involved.

15. The Law Society, having given a decision on a complaint which the complainant does not accept and on which he continues to correspond, may inform him that no further letters will be answered. I do not criticise this procedure, but in one case I invited The Law Society to consider a later letter as amounting to a fresh complaint.

16. In virtually all cases the main allegation to me has been that the decision of the Society was wrong and has often been coupled with allegations that the investigation should have been wider in scope, for instance by questioning

witnesses or seeking information from court records. It is not generally appreciated that The Law Society's powers are limited by its Charter and by Act of Parliament and that it has no power to summon witnesses or order a solicitor to compensate a client. Whilst the Society endeavours to make clear that it cannot consider matters of law or give legal advice, there are those who believe it to be a form of court and feel that issues are being evaded when no opinion is expressed.

17. In examining the Society's treatment of a complaint I have considered not only how it has pursued its enquiries but how the actions of the solicitor have struck me as an independent layman. I cannot comment on issues of law, the competence shown in handling affairs or the fees chargeable, but there seem to me areas in the professional practice of solicitors which may not be wholly satisfactory for the public. I say "may" because experience is slow to accumulate and my sample small compared with the whole range of a solicitor's responsibilities.

18. Although the Law Society does not keep detailed statistics about the nature of complaints, I understand it finds that only about 25 per cent. of complaints received raise possible issues of professional conduct. A large proportion of the remainder appears to be outside the Society's powers to determine and no doubt some are frivolous or vexatious. The cost of the Society of dealing with complaints by the public is of the order of £100,000 a year and yet there are times when its staff are hardly able to keep abreast of correspondence. It must be a cause for concern that effort on such a large proportion of complaints is nugatory. For this reason I have been concerned to study the nature and circumstances of the complaints more deeply than my function strictly requires: there appears to be a considerable measure of public discontent which cannot be wholly attributed to the bitterness a man feels when he has lost a dispute.

Negligence

19. There are suggestions of negligence in a large proportion of complaints made to the Law Society and subsequently referred to me, varying from assertions of a definite error by the solicitor to criticism of his advice.

20. The complex problems with which solicitors deal are often open to different opinions and approaches, particularly before all the relevant information is available or assessed. Clients dissatisfied with the conclusion of a matter sometimes feel that if it had been differently handled, with more weight put on the relevance or importance of particular factors, the result would have been more in their favour. Briefly, they cannot accept the outcome. They subsequently appeal to The Law Society and are aggrieved that the Society cannot consider questions of law and that further funds must be put at risk for obtaining legal advice from an independent solicitor.

21. In some cases the client represents the matter as an issue of conduct (and, indeed, the dividing line between negligence and misconduct may be elusive) and is disgruntled when told that the question of negligence must be disposed of before the question of misconduct can be investigated. Viewed dispassionately, the procedure is logical in that The Law Society has not the powers of a court and its enquiries could prejudice either solicitor or client in the legal action. But the aggrieved client is not at all dispassionate and, seeming to get no support from The Law Society, may deduce that all solicitors are a mutually supporting closed shop.

22. The Law Society is very careful not to express an opinion on whether there has been negligence or not. There are those who conclude from this that they have a case because The Law Society has not denied it. When several other solicitors have expressed a negative view (and charged for their work) these clients further conclude that "you cannot sue a solicitor".

23. Such experience as I have does not support this conclusion where an error has plainly occurred. But I have not found it possible to form an opinion on more complex issues where interpretation of the law or the advice given has been in question. On occasions I have wondered how complete has been the explanation of advice that there is no case, and there appear to be clients who regard with considerable suspicion a solicitor's valid reasons for not acting, such as a conflict of interest or lack of requisite specialist experience. Since some aspect of negligence is alleged in so many complaints I believe that there is a need for the public to have confidence that they can readily get impartial and expert advice when they are considering proceedings against a solicitor. I have given much thought to this in the past year.

24. It seems to me that lists of solicitors who have the skill and experience for professional negligence litigation should be compiled and available to the public on demand. It may well be that the client would choose a solicitor remote from the area of practice of the solicitor against whom negligence is alleged and that any legal aid application should be dealt with outside that area. The present process of clients hawking these affairs to solicitors haphazardly recommended by friends or bank managers does not make for public confidence in an aspect of the law where suspicion of excessive professional loyalty is inevitable.

Competence

15. An allegation that a solicitor has not handled the client's affairs with complete skill is implicit in a number of the complaints made to The Law Society and referred to me. I have neither the experience nor the knowledge to form adequate opinions in individual cases, although I am convinced that some disappointed litigants instinctively assume that their solicitors must have been at fault.

26. There are some cases, however, particularly those which have proceeded slowly, in which I have the impression that one party's solicitors have acted with greater forcefulness and experience than the other's. I hesitate to conclude that the more skilled take advantage to delay the proceedings unduly, but the possibility of an obstacle to the administration of justice is present particularly where the plaintiff is a man of limited means and the defendant is, or has the backing of, a wealthy organisation given to instructing solicitors of vast experience in this type of litigation. For example, a fatal accident claim which came to my attention has still not been brought to a hearing after six years, although criminal proceedings were completed within four months of the accident, and I can only deduce that the plaintiff's solicitors lacked the forcefulness and perhaps the expertise of their opponents.

27. I feel there is need for the public to have more information on the experience and specialized fields of firms of solicitors; for a system of control to prevent solicitors dealing with matters of which they have little experience; and for the timing of negotiations and subsequent proceedings before trial to be more precisely regulated. In brief, a client should have confidence that the solicitors he instructs will not be lacking the skill, experience and procedural armoury to match his opponents.

28. Professional competence is also affected when a solicitor or firm of solicitors simply takes on too much work and is unable to give individual cases the attention they deserve. In those cases where I have had this impression, questions of negligence, competence and conduct have been raised and there have been complaints of delays in answering letters or expediting business. The intervention of The Law Society seeking the solicitor's observations may help the individual case, possibly at the expense of others; but these seem the most unsatisfactory complaints to resolve, apart from the exceptional case which justifies The Law Society in exercising its statutory discretion to issue the next practising certificate subject to conditions.

Dishonesty

29. My impression is that The Law Society's handling of complaints of dishonesty is satisfactory to the public. There is, however, one problem in this field which has caused me concern and it is illustrated by a case brought to my attention. A solicitor was dismissed by his firm for financial irregularities although there was no actual loss to the clients or partners. The facts were reported to The Law Society but, while investigations were continuing, the solicitor was employed by another firm and later convicted of **stealing its clients' money**. My impression is that The Law Society was not slower in its enquiries than, say, the fraud squad would have been. Nevertheless during the period of secrecy surrounding the Society's investigation unsuspecting members of the public suffered loss. The possibility of compensation by the partners or by the Society's compensation fund does not wholly solve the clients' difficulties. At my invitation The Law Society is considering the problem of protecting the public while investigations are continuing.

THE NATURE OF THE COMPLAINTS

Delays

30. The most frequent complaint is of delay in handling clients' affairs. Whilst the processes of litigation sometimes seem slow to a layman, those cases which I have examined suggest that legal processes are not normally the exclusive causes of delay. In many cases it is possible, with the benefit of hindsight, to see where substantial time (and probably costs) could have been saved, although some of these delays are certainly not of the solicitors' making. Delays in getting expert or professional opinion or in correspondence with other organisations (including Government Departments) are sometimes considerable, and can be very infectious. Whether delays attributable to solicitors amount to negligence or misconduct can be debatable and it is in these borderline cases more than others that I have sought (or invited The Law Society to seek) further information. In one case, I recommended that the Council of the Society should reconsider the complaint as an issue of professional conduct.

31. Delays, whether in litigation or not, are not just a question of waiting for results. Quite apart from the emotional strain, the whole circumstances of life may change when five, six or even more years elapse between the original event and the conclusion. Some clients, perhaps obliged to keep solicitors in funds in the intervening period, have to make radical alterations to their life-style even to the point of staving off bankruptcy. My experience is that delay is most commonly complained of in matrimonial proceedings, in the administration of estates and in some particular areas of civil litigation such as building disputes and accident claims.

32. I believe there is need for the causes of delays in the whole process of the law to be studied by those with the necessary knowledge and sources of information. By no means all these delays are wholly within the control of solicitors or curable by stop-gap measures at particular points or by disciplinary action in individual cases.

Solicitors' charges

33. Solicitors' charges are not matters which I have any powers to consider. They do, however, form the basis of a large number of complaints and are implicit in others in which the prime complaint is that the solicitor has not handled the client's affairs as well as may be. On questions about charges I have not been able to do more than draw attention to The Law Society's obligation (in matters not involving litigation) to scrutinise a solicitor's bill at the instance of the client and issue a certificate as to its fairness and reasonableness, and to

the client's right in all cases to have his solicitor's bill "taxed", that is assessed, by the court.

34. The root cause of complaints about charges often seems to be that, since the client does not know what charges may be expected, the final bill comes as a complete surprise. Although the indications are that fees are seldom now considered a subject too delicate to mention, cases coming to me show that solicitors' estimates are sometimes vague and optimistic and the client has no idea what costs have been incurred to date. I have studied the accounting methods of one firm of five partners who use a time-costing system based on a recommendation of The Law Society: they are able to tell a client, at a few minutes' notice, what his charges are up to the previous evening, and the partner or legal executive dealing with a client's affairs can tell him when present costs are approaching earlier estimates made, and make fresh ones. With such a system and sufficient explanation of what has to be charged for, a client knows where he stands. It is where explanation is inadequate and accounts not available that he becomes suspicious and feels he has been taken for a ride.

35. The public are encouraged to "shop around" in most of their affairs, from buying detergents upwards. It is very reasonable that the client should seek an estimate from his solicitor and that the solicitor should give one, explaining where uncertainties may lie, and if unforeseen work becomes necessary it seems to me that the client should be kept informed. In one recent case, the purchaser of a house sought estimates on the telephone from five local solicitors and instructed those whose estimate was marginally the cheapest. Their ultimate charges were substantially larger than the estimate. No explanation was offered, and the client deduced a lack of care in business methods and drew some inference that there was impropriety in offering the original estimate.

The solicitor's lien

36. The solicitor's lien on documents is usually a procedure clients only discover by harsh experience—sometimes when the client is disenchanted and seeks to change solicitors without paying the full bill. Although I have come across cases in which solicitors have as a courtesy waived a lien on documents without prejudice to any further action they may take to recover fees, I do not think the securing of costs by the exercise of a lien is a wholly satisfactory procedure.

37. In my view a client should have his papers returned when he needs them to pursue further action on which he is seeking other advice. The solicitor can always take proceedings for his charges, in which the client is at risk for costs, but for the client to be obliged to incur delays and charges in taking legal action for the recovery of documents seems to me unfair.

38. It was in a case where solicitors expressed the intention of retaining papers which had no relation to the particular business in respect of which the clients owed them money that I recommended that The Law Society should reconsider the issue as a matter of conduct constituting a possible abuse of the lien.

THE CIRCUMSTANCES GIVING RISE TO THE COMPLAINTS

39. I have kept a record of the general circumstances in which complaints have arisen in the hope of detecting the areas where significant discontent may exist. These circumstances are broken down in the statistics set out in Appendix II. It is noticeable that I have had very few complaints arising from criminal cases.

40. Property disputes include a wide variety of matters which I have as yet been unable to categorise precisely. Many clients have difficulty in accepting what it may be necessary to show before a judge when they have already convinced themselves that they "know all the facts". The time taken and expense

incurred in seeking expert opinion of surveyors, ~~values~~, accountants and so forth is resented. Many people have little idea of the work involved in conveyancing or the administration of estates and tend to draw parallels with the experience of others where in fact the circumstances may be quite different. The tenants and landlords with whose cases I have been concerned do not seem to understand the law or the principles on which it is based.

41. In divorce, the idea that the greater sinner should suffer most in maintenance, property division or the custody of children ~~does~~ hard in the public mind. Some husbands and wives are appalled at what they consider untruths in the other side's statements—and they may well be right: their knowledge is probably better than solicitors' or counsel's in personal matters.

42. The majority of circumstances in which complaints have arisen show how incomplete is the public understanding of the law and legal processes. In some cases I have the impression that solicitors' explanations in consultation were inadequate, but there are also clients whose views had intractably hardened before seeking advice to the extent that they cannot believe other opinions are even possible. Some progress in educating the public has been made. The Law Society has published booklets and makes film strips and lectures available to schools on request; but much of the public's knowledge is haphazardly gathered from newspapers, television or hearsay and applied to their own affairs without real discrimination. Citizens' Advice Bureaux and Law Centres endeavour to make information and a degree of advice more readily and economically available but this, like the solicitor's advice, may be too late. Whether it is possible to teach in schools as a compulsory subject sufficient law for citizens later to have a reasonable understanding of their own affairs I do not know, but until there is more complete understanding many an individual's recourse to law will be a traumatic experience in which a sense of injustice will remain. Complaints will still be made to those who are prepared to listen and bitterness set in when no more can be done.

The powers of the Lay Observer

43. At this stage in my experience, I have not found the Lay Observer's powers inadequate. I have been grateful for The Law Society's co-operation in further enquiries when it has been questionable whether the subject is within my powers or not. This has helped me to form opinions, albeit tentative, on some of the needs I have mentioned. My general feeling is that it is unlikely that a lay observer would have the knowledge or the experience on which to found reliable opinions on such matters as negligence and professional competence, even if he had the powers to extract information from all sources. For the same reason I do not think he is a suitable person to give practical information on the application of the law to a particular case. It is a formidable task for a layman to gain even some knowledge of law and procedures evolved over centuries, but to expect him to gain an understanding sufficient for some kind of adjudication in individual cases would be to make him more lawyer than layman.

44. Nevertheless, the Lay Observer acquires a considerable body of information about the areas of public dissatisfaction with the legal process: cranks and disgruntled litigants are among those who complain to me, but they are not a majority. In drawing attention to some features of the legal process which seem to me, a layman, unsatisfactory, I am seeking to illustrate what I am coming to believe is a significant truth—in many cases the public finds the working of the law to be too slow, too expensive and too difficult to understand.

Summary of impressions

45. My total sample of cases is too small to form positive conclusions, but I have gained a number of impressions which I summarize here. I include certain tentative suggestions for improvement in aspects of the legal process where a need has come to my attention.

- (1) I have not found The Law Society's treatment of complaints inadequate except in some minor matters of detail or explanation.
- (2) Since the Society has no power to decide complaints concerning negligence or professional competence a considerable amount of its work in unravelling complaints is necessarily unproductive.
- (3) The indications are that some nugatory effort would be saved if the public had a better understanding of the law and legal processes and if explanation in some solicitors' offices was more complete. There is a continuing need for better public understanding of the principles and processes of the law, particularly before individuals become emotionally involved in their particular affairs.
- (4) There is a need to ensure that members of the public have confidence that they will be competently and impartially advised when they seek to bring proceedings against solicitors for negligence.
- (5) There is a need for the public to have confidence that the skill and experience of solicitors acting in certain litigation is not in question and that undue advantage cannot be taken by those of greater expertise.
- (6) Delays throughout the whole range of legal processes cause considerable distress to individual members of the public. There is a need for these delays to be studied with a view to reducing them.
- (7) In some solicitors' offices there is a need for better standards of estimating costs and furnishing up-to-date accounts.
- (8) There is a need to review the effects of the exercise of a solicitor's lien and to eliminate those aspects which are not in the public interest.
- (9) Despite some indications of public demand to the contrary, there is no case at present for an increase in the Lay Observer's powers.

(Signed) GODFREY PLACE

Lay Observer

4th March 1976.

[NOTE: APPENDIX I to this Report is reproduced at pp. 266-267 of the Working Paper, "Discipline as a Means of Assuring Continuing Competence in the Professions and Tables of Discipline Activities by Profession"]

APPENDIX II

Statistics

(17.2.75 to 31.1.76)

The Lay Observer's Work

	<i>Number</i>
1. Correspondents	437
2. Allegations accepted for examination	162
3. Allegations disposed of	140
4. Cases where Lay Observer criticised The Law Society's treatment of a complaint (including two cases where he recommended the Council of The Law Society to reconsider a complaint as raising an issue of professional conduct)	13

Nature of Complaints whose treatment by The Law Society was examined by the Lay Observer

<i>Nature</i>	<i>Number</i>
1. Undue delays	82
2. Withholding documents or information, exercise of lien ...	47
3. Accounts	14
4. Disclosing confidential information... ..	13
5. Conflicts of interest, collusion	12
6. Unqualified staff	10
7. Negligence or incompetence	13

Note: In most cases the above classification refers to the principal complaint raised by the correspondent, but in some cases two or more complaints are included from a single correspondent.

Circumstances of Complaints whose treatment by The Law Society examined by the Lay Observer

	<i>Number</i>
1. Criminal proceedings	3
2. Matrimonial proceedings	29
3. Administration of estates	23
4. Landlord and tenant	16
5. Conveyancing	7
6. Miscellaneous property disputes (boundaries, buildings, patents, motor-cars, stocks and shares, etc.)	62
7. Contractual disputes	3
8. Professional negligence (architects, doctors, solicitors) ...	4
9. Personal injury cases	3
10. Miscellaneous	12

Note: I have also kept record of the circumstances of complaints which were not within my powers to examine: they indicate a very similar proportion to the above.

SECOND ANNUAL REPORT OF THE LAY OBSERVER UNDER SECTION 45 OF THE SOLICITORS ACT 1974

*To the Right Honourable the Lord Elwyn-Jones, C.H.,
Lord High Chancellor of Great Britain*

I have the honour to submit my Annual Report for my second year in this appointment, which I completed on 16th February 1977.

REVIEW OF WORK DONE DURING THE YEAR

2. 305 correspondents have represented their problems to me during the year. 127 have concerned The Law Society's treatment of a complaint about a solicitor's conduct into which I have enquired, and in 117 I have completed my examination.

3. In six cases I have informed The Law Society that I felt a more complete treatment by the Society was desirable, in three of which I have recommended that the matter be referred to the Council rather than decided by an individual officer. In four cases I have recommended that the decision of the Society be reconsidered. In one (which required expedition rather than reconsideration) the Council rebuked the solicitor in an incidental matter represented originally to me; one is as yet undecided; one was more completely explained but not altered in substance; and in the fourth the Council expressed certain wishes to the solicitor to which I refer in paragraph 19 of this report.

4. I have continued to see individual complainants where I have thought verbal explanation warranted this or to determine the true nature of the complaint where correspondence was not clear. For some, personal explanation has been an advantage and others may have found a certain therapy in talking about their problems—it is surprising how less conducive to acrimony is the spoken rather than the written word.

5. Although the number is rather smaller than last year, the types of problem the public feel they encounter follow a very similar pattern.

THE LAW SOCIETY'S TREATMENT OF COMPLAINTS

6. I would again emphasize that no case of serious dishonesty—such as misappropriation of funds or deliberate deceit of a serious nature—has been referred to me after decision by The Law Society. I conclude, as I did in paragraph 12 of last year's Report¹, that the Society discharges its duties in these respects with thoroughness.

1. *First Annual Report of the Lay Observer 1975-1976*, H.C. 312 (1975-76).

7. In a number of cases the public have alleged that The Law Society has been slow in determining their complaints. Unless circumstances warrant an immediate intervention by the Society into the solicitor's records—as would be the case in serious dishonesty—the Society's practice is to obtain the solicitor's written observations. This requires swift and accurate co-operation by the solicitor complained of or the complainant becomes suspicious and untrusting. Despite increased experience, I still find it difficult to set a yardstick on what is a reasonable time for complaints to be determined by the Society. In two cases this year there was a total absence of response from the solicitors to the Society's letters for more than two months, in spite of reminders. In one of these cases the issue of not replying to the Society's letters has itself been brought before the Council as a matter of conduct. In a few other cases solicitors' replies have been incomplete in detail, leading to further correspondence and delay. Any lack of complete co-operation in these written representations by an individual solicitor or firm brings the reputation of the profession and the standing of The Law Society into question in the eyes of the public.

8. In the considerable majority of matters referred to me it is not the propriety of the solicitor's conduct that is in question, but rather is there criticism of how he has done his work in the broadest sense. Complaint may be levelled at any part of the whole range of his activity: the time taken, explanations given, the quality of the advice, the fees charged. Where the propriety of conduct is in question in complaints referred to me after The Law Society's decision, it is of a nature which would, if substantiated, be more likely to merit deprecation or rebuke rather than disciplinary proceedings. Many of these complaints cannot be satisfactorily resolved on the conflicting information represented to the Society. Some are so trivial that detailed investigation is not justified. Nevertheless, my own view is that not only individual firms of solicitors but the profession generally would benefit from the knowledge of even trivial complaints which indicate an area of public dissatisfaction. I believe there is a service to the profession, and therefore to the public, that The Law Society can perform in the consideration of these complaints which are, in the final count, criticisms of the competence of solicitors.

THE NATURE OF THE COMPLAINTS

9. These follow a very similar pattern to last year. Allegations of negligence, incompetence or dissatisfaction with the advice given are implied in the majority of complaints even where the complaint purports to be about professional conduct. The public are most usually seeking a redress which it is not within The Law Society's powers to determine.

Complaints about competence generally

10. I have found no reason to revise my impression of last year^a that the prime need for the client seeking redress for the alleged negligence of a solicitor is that the client should have confidence that he will be competently and impartially advised. Suggestions continue to reach me that negligence might be dealt with on representations, written or oral, before a committee—either with independent lay members or within the aegis of The Law Society—but I do not believe there is a proper substitute for the individual client explaining his allegation to an independent skilled adviser who gives him clear and authoritative advice, and continues to act for him in any subsequent proceedings.

2. *First Annual Report*: W.C. 332, para. 45 (4).

11. In a number of complaints the competence of the solicitor, in the sense of his skill in handling the affairs in which he is instructed, is questioned. But The Law Society does not consider complaints of incompetence or negligence. Whilst redress for the client can only be awarded by the courts, it seems to me very desirable in the interests of the profession and of the general public that lessons from mistakes are learnt. I have given some thought to whether The Law Society would perform a useful function by considering complaints about competence and I believe the Society would be wise to look through this window on the world. Although the courts, the legal profession and the press all "feed back" experience which helps the profession to improve standards, complaints about matters which do not reach public hearing are an important source of information which should not be overlooked.

12. Complaints as to competence which reach me cover the whole spectrum of a solicitor's work and I believe that in many cases The Law Society could act without risk of prejudice to legal proceedings. I offer some examples. Where office error is apparent, such as a date missed, witnesses not warned, promised follow-up action not taken and so forth, I believe The Law Society should at least ensure that the senior partner of the firm is informed so that he may take corrective action in his office administration: the facts of office error are seldom in dispute. Delay is pernicious. It should be the subject of Law Society comment even if only in the form of an opinion. Where explanation to the client has failed (not always the solicitor's fault) the failure should be made known to the solicitor so that the experience is not lost. It is not practicable for The Law Society to consider the quality of advice in individual cases but the circumstances and the care with which it is given may merit comment.

13. I have been glad to see that in the past year the Society has advised the profession on providing estimates of conveyancing fees. But evidence of ill-considered estimates in other matters continues to reach me: woolly advice in the form of over-optimistic estimates for damages at too early a stage can be very misleading to clients; a client's advisers should not surprise him when recommending a settlement at the door of the court; and counsel's opinion must be available when there is still time for calm thought.

14. It may well not be possible in every case for the complainant to be informed of the action taken or opinion expressed by the Society, but this does not seem to me adequate reason for the Society giving no consideration to a complaint which raises issues of competence and where no misconduct is apparent. In many cases the information in a complaint gets no further than the individual officer of the Society, and neither the firm nor any partner is aware of the complaint. The experience to be gained for the future is lost.

Complaints relating to fees

15. Solicitors' fees, on which I can make no comment and The Law Society can only express an opinion where proceedings on behalf of a client have not begun, are a frequent source of complaint. The public, when not legally aided, find the seeking of advice very expensive and become very worried about costs when litigation seems possible. At the same time, my impression is that solicitors find certain business insufficiently remunerative and delegate some work in a way that seems to the client impersonal. As I mentioned in last year's Report³, efficiency suffers when solicitors take on more work than their offices can absorb.

16. There are also cases where one wonders whether the game is worth the candle.

17. In one case, the client's costs in seeking the variation of a maintenance order were more than double the annual increase finally settled: fortunately for her, she was legally aided.

3. H.C. 332, para. 28.

18. In another case, the professional fees for a man seeking compensation for damage caused by main road water flowing into his cellar already approach the amount he paid for his house, with the case not yet come to trial. This latter case is one of a small number where action against a local authority requires the prolonged outlay of considerable funds. Despite some public impression to the contrary, it is not my experience that solicitors are unwilling to take action against local authorities. Rather, my impression is that local authorities are reluctant to settle without full court proceedings and solicitors must therefore warn clients that funds may remain at risk for a long time.

19. One case was referred by me to The Law Society for re-consideration. A legally-aided client was plaintiff in an action against a company, who offered a settlement of £120 at the door of the court, each party paying their own costs. Counsel was advised by the plaintiff's solicitors that the plaintiff's costs would be £90, and on these terms the settlement was agreed. The solicitors later submitted a bill considerably in excess of £120, making the settlement ridiculous. The Council of the Society expressed the wish that, although the fees charged were a matter of law which it had no power to decide, £30 should be refunded by the solicitors to the client. The solicitors declined to do so, saying that there were also pre-certificate costs which they had intended to waive. To my mind, the client should have been given a reasonably accurate forecast of costs in order to decide whether to accept the settlement, and the solicitors' failure to provide this forecast and stand by it showed inadequate competence and understanding. That the sums involved are relatively small seems only to emphasize an obstinate disregard for the reputation of their own firm and the profession.

THE CIRCUMSTANCES GIVING RISE TO THE COMPLAINTS

20. As last year, most complaints have arisen from disputes as to property, divorce and matrimonial proceedings and the administration of wills and estates: all very emotional subjects.

The client's fallibility

21. Much stems from incomplete understanding: a boundary may be impossible to define with exactitude from earlier plans; spouses seek to defend divorces to "clear their names" where advice in law is that the marriage has irretrievably broken down; and beneficiaries of wills misunderstand the duties of executors. In my experience as Lay Observer, the public are often ignorant of the principles of law and over-optimistic on what the courts can do, particularly in relation to the awards of damages. Popular misconceptions continue in spite of apparently competent legal advice: the common supposition that failure to meet a contract is criminal fraud or theft, the "guilty party" in divorce, and the "rights of the first born" in inheritance. Too often does the unsuccessful litigant describe the outcome as "I was found guilty".

The solicitor's fallibility

22. Whilst it is sometimes too late for a client to overcome pre-conceived notions by the time he first takes legal advice, there are nevertheless cases where I have felt a lot of sympathy for clients who have suffered from inadequate early explanation or advice by their solicitors.

23. Again, settlements at the door of the court seem to me unsatisfactory if advice to accept the settlement comes as a complete surprise: the atmosphere in the court lobby is not conducive to making final and far-reaching decisions. "After two-and-a-half hours of arguing in the main hall I was so confused that I ran out screaming", as one lady described her plight. In another case, which had taken two-and-a-half years to come to court, counsel advised a few minutes before the court opened that the case would certainly be lost and costs considerable. In another, counsel was brought in at the last minute because the

solicitor could not attend and took a completely opposite view to that of the solicitor.

24. Charges of inaccuracies (usually expressed as "perjury" or "fraud") in the other party's affidavits, continue to be represented as complaints against that party's solicitors despite advice to the complainant from his own solicitor and from The Law Society that statements in affidavits are matters for the courts to decide. Nevertheless I have some impression that a "belt and braces" approach in the preparation of affidavits, especially in matrimonial proceedings, may cause unnecessary acrimony. I have a lot of sympathy for the lady whose husband, legally aided, petitioned for divorce on the grounds of 19 years' separation (which was agreed) but also referred to her alleged sins of 20 years ago (which she disputed). She felt very bitter at not being granted legal aid to defend the divorce itself, because she wanted to clear her name and felt that legal aid for the ancillary matters of maintenance was but poor consolation.

25. The Law Society is, I understand, now keeping statistics of the nature of complaints and the circumstances in which they arise with a view to their use for the wider information and guidance of the profession.

SUMMARY

26. The impressions I had a year ago remain very much the same today and I have repeated them in Appendix I for convenience of reference. Appendix II contains a detailed breakdown of the cases.

27. In essentials, the public dissatisfaction that has reached me in these past two years reveals two needs: for a greater competence on the part of some solicitors and for a greater understanding by the public of the principles and processes of law and the role of lawyers and the courts in our society.

28. My sample is very small in relation to the vast amount of legal business transacted and I have no reason to believe that lack of competence by solicitors is more general than is indicated in the complaints made to The Law Society and myself. Nevertheless, that does not seem to me a reason why specific examples should go unheeded and I feel some impatience when there is a repetitive similarity in these types of complaint. Whilst the individual client must seek redress in legal proceedings, I believe The Law Society can make greater use of the information gleaned from public complaint in the continuing improvement of professional standards.

29. I believe my sample of the lack of public understanding of the principles and processes of law is representative of a much wider lack of education. There seems to be a point in human affairs where emotion overtakes reason and no logical process thereafter will cure the bitterness an individual feels at an outcome not to his liking. A great many of our people today have legal problems concerned with their employment, marriage, property and in criminal matters, and so scant is their knowledge that it is too often impossible for them to take a reasoned view on the advice given to them when emotions have clouded logic. Nor are they always able to recognise the need for legal advice. Good as have been The Law Society's endeavours to make film strips and lectures available to schools, ignorance and serious misconceptions are likely to continue until the principles and processes of law are taught in school as a curriculum subject: after school it is too uncertain, too haphazard and frequently too late.

(Signed) GODFREY PLACE

Lay Observer.

2nd April 1977.

APPENDIX I

Summary of impressions in 1975-76 report

(Repetition of paragraph 45 (1)-(9), in 1975-76 Report⁴)

1. I have not found The Law Society's treatment of complaints inadequate except in some minor matters of detail or explanation.
2. Since the Society has no power to decide complaints concerning negligence or professional competence a considerable amount of its work in unravelling complaints is necessarily unproductive.
3. The indications are that some nugatory effort would be saved if the public had a better understanding of the law and legal processes and if explanation in some solicitors' offices was more complete. There is a continuing need for better public understanding of the principles and processes of the law, particularly before individuals become emotionally involved in their particular affairs.
4. There is a need to ensure that members of the public have confidence that they will be competently and impartially advised when they seek to bring proceedings against solicitors for negligence.
5. There is a need for the public to have confidence that the skill and experience of solicitors acting in certain litigation is not in question and that undue advantage cannot be taken by those of greater expertise.
6. Delays throughout the whole range of legal processes cause considerable distress to individual members of the public. There is a need for these delays to be studied with a view to reducing them.
7. In some solicitors' offices there is a need for better standards of estimating costs and furnishing up-to-date accounts.
8. There is a need to review the effects of the exercise of a solicitor's lien and to eliminate those aspects which are not in the public interest.
9. Despite some indications of public demand to the contrary, there is no case at present for an increase in the Lay Observer's powers.

4. H.C. 332.

APPENDIX II

Statistics (1.2.76 to 31.1.77)

The Lay Observer's Work

<i>(Previous year's total in brackets)</i>						1975-76
1. Correspondents	...	...	...	...	...	305 (437)
2. Allegations accepted for examination	...	...	...	...	...	127 (162)
3. Allegations disposed of	...	...	...	...	...	117 (140)
4. Cases where Lay Observer criticised The Law Society's treatment of complaint (including four cases where he recommended the Council of The Law Society to reconsider a complaint as an issue of conduct)	...	...	...	...	...	10 (13)

Nature of complaints whose treatment by The Law Society was examined by the Lay Observer

1. Undue delays	...	...	...	...	...	31 (82)
2. Withholding documents or information, exercise of lien	...	...	...	...	...	13 (47)
3. Accounts	...	...	...	...	...	27 (14)
4. Disclosing confidential information	...	...	...	...	...	7 (13)
5. Conflict of interest, collusion	...	...	...	...	...	11 (12)
6. Unqualified staff	...	...	...	...	...	3 (10)
7. Negligence, incompetence or dissatisfaction with advice given	...	...	...	...	...	35 (13)

Note: In most cases the above classification refers to the principal complaint raised by the correspondent, but in some cases two or more complaints are included from a single correspondent.

Circumstances of complaints whose treatment by The Law Society was examined by the Lay Observer

1. Criminal proceedings	...	...	...	...	...	4 (3)
2. Matrimonial proceedings	...	...	...	...	...	36 (29)
3. Administration of estates	...	...	...	...	...	18 (23)
4. Landlord and tenant	...	...	...	...	...	3 (16)
5. Conveyancing	...	...	...	...	...	13 (7)
6. Miscellaneous property disputes not included above	...	...	...	...	...	26 (62)
7. Contractual disputes	...	...	...	...	...	7 (3)
8. Professional negligence	...	...	...	...	...	2 (4)
9. Personal injury	3 (3)
10. Employment	4 (not previously classified)
11. Miscellaneous	11 (12)



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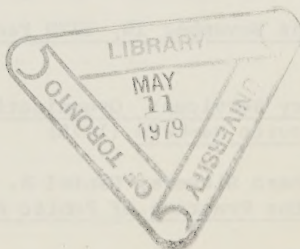
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